TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1919

No. [redacted] 23

CORSICANA NATIONAL BANK OF CORSICANA, PLAINTIFF IN ERROR,

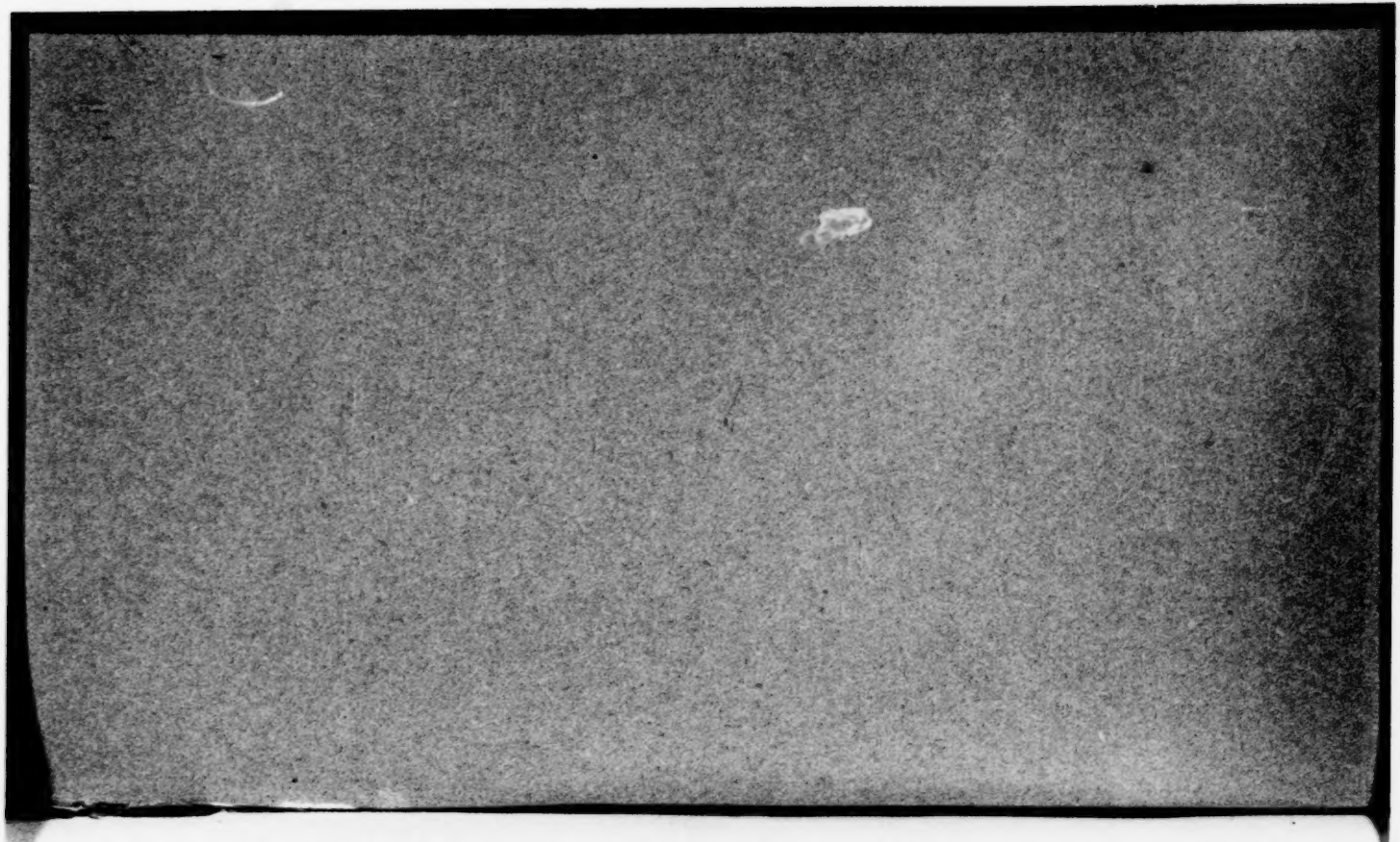
vs.

SAMUEL WISTAR JOHNSON.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MARCH 2, 1917.

(25,800)



(25,800)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 970.

CORSICANA NATIONAL BANK OF CORSICANA, PLAINTIFF IN ERROR,

vs.

SAMUEL WISTAR JOHNSON.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1916, at Fort Worth, Texas, before the Honorable Don A. Pardee and the Honorable Richard W. Walker, Circuit Judges, and the Honorable Rufus E. Foster, District Judge:

CORSICANA NATIONAL BANK, Plaintiff in Error,

versus

SAMUEL WISTAR JOHNSON, Defendant in Error.

Be it remembered, that heretofore, to-wit, on the 29th day of May, A. D. 1916, a transcript of the record of the above styled cause, pursuant to a writ of error to the District Court of the United States for the Northern District of Texas, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2934, as follows:

(a)

CAPTION.

BE IT REMEMBERED, That at a term of the District Court of the United States in and for the Northern District of Texas, begun and holden at Dallas, Texas, on the 10th day of January, A. D. 1916, and which term adjourned on the 11th day of March, A. D. 1916, the Honorable Edward R. Meek, United States District Judge, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

CORSICANA NATIONAL BANK,

versus No. 2603, Law.

SAMUEL WISTAR JOHNSON.

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2 PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION.

Filed 11th January, 1916.

Now comes the plaintiff and having first obtained leave of the Court, files this, its third amended original petition, in lieu of its former petition and bill in chancery in the consolidated case styled "Corsicana National Bank of Corsicana vs. Samuel Wistar Johnson," and for cause of action avers, as follows:

I.

That plaintiff is now and at all the times hereinafter mentioned has been a National Banking corporation, organized under the National Banking Laws of the United

States of America, domiciled at Corsicana, in Navarro County, State of Texas, and that the defendant is a citizen of the State of Texas and inhabitant of the Northern District of Texas and resides at Corsicana, Navarro County, Texas.

II.

That heretofore, to-wit, on the 10th day of June, 1907, the plaintiff was and ever since has continued to be and is now, a National Banking Association organized under the laws of the United States, and the defendant was, on said last named day, a member of the Board of Directors of the plaintiff, and was then and there the Vice-President of the plaintiff, and as such authorized by the plaintiff to make loans of its funds. That on said date, and continuously thereafter, the capital stock and surplus of the plaintiff did not excess $200,000.

III.

That on June 10, 1907, Fred Fleming and D. A. Templeton, as partners, under the firm name and style of Fleming & Templeton, operated a private bank at Corsicana, Texas; and the said firm of Fleming & Templeton continued to exist and do business until, to-wit, the 15th day of January, 1908, although the said firm closed their banking business at Corsicana, shortly after June 10, 1907, and liquidated the same through plaintiff. That on, to-wit, June 10, 1907, the defendant, as the active Vice-President and being then an officer of, to-wit, the Vice President of the plaintiff, and being then and there a director of the plaintiff, negotiated with the said Fred Fleming and D. A. Templeton, partners as aforesaid, a loan of the plaintiff's funds; and did then and there on June 10, 1907, lend to the said Fred Fleming and D. A. Templeton, partners, under the firm name and style of Fleming & Templeton, the sum of $30,000; and to evidence the said loan the said defendant acting as the vice-president and being then and there a director of the plaintiff, took on behalf of the plaintiff,

two certain promissory notes, executed by the said Fred Fleming and D. A. Templeton, each for the principal sum of $15,000, dated June 10, 1907, and payable six months after date, bearing interest after maturity at the rate of 10% per annum, and the defendant, acting as such Vice-President and director, did then and there transfer to the said firm of Fleming & Templeton, composed of the said Fred Fleming and D. A. Templeton, the sum of $30,000, in money, the funds of the plaintiff, in the way of a loan, evidenced by said two notes of June 10, 1907, hereinbefore described. The plaintiff further represents that at the maturity of said two notes hereinbefore mentioned the makers thereof were reputed to be solvent and responsible for the amount thereof, and the said defendant, still acting as a director of the plaintiff, as the vice-president of the plaintiff, and as the agent of the plaintiff in making loans of its funds and taking renewals thereof, renewed said note for an additional six months by taking new notes of the said Fred Fleming and D. A. Templeton, two in number. each for $15,000, and both due June 10, 1908, thereby extending the date of the payment of said loan, and making a new loan of the funds of the plaintiff, in the sum of $30,000, to the said Fred Fleming and D. A. Templeton, partners, under their said firm name of Fleming & Templeton.

4 IV.

Plaintiff represents that on the 5th day of February, 1908, the said Fleming & Templeton, and the said Fred Fleming and D. A. Templeton became insolvent and their insolvency thereafter was notorious and known to the defendant as well as to the plaintiff, and that at the maturity of said renewal notes the said Fred Fleming and D. A. Templeton and the said Fleming and Templeton continued to be and were, each and all, openly and notoriously insolvent, so that the said notes and each of them could not be collected save in small part, and they have not been collected, save in small part, as hereinafter shown, nor can the balance due on said notes be collected.

V.

Plaintiff further represents that the discount of said notes hereinbefore mentioned was an excessive loan, whether regarded as one loan to the firm of Fleming & Templeton, as plaintiff alleges the fact to be, or regarded as two loans, as contended for by the defendant in his pleadings heretofore filed herein.

VI.

And plaintiff further represents that prior to any of the dates hereinbefore mentioned the defendant and the other officers and directors of plaintiff had caused to be organized under the laws of the State of Texas a corporation known as "Corsicana National Land Loan Company," which said corporation was organized with a capital stock of $50,000, which was paid into said last named corporation in cash with money furnished to them by the plaintiff for that purpose by the subscribers to its capital stock, who were also the stockholders in the plaintiff; that each stockholder in the plaintiff subscribed for stock in the Corsicana National Land Loan Company in the proportion that he or she held stock in the plaintiff, so that the stockholders of the two corporations were identical and owned their interests in the two corporations in the same proportion, and no money was put into the Corsicana National Land Loan Company by its stockholders save money which was furnished to them by the plaintiff for that purpose; that upon its organization and down to a short time prior to the institution of this suit, long after February 12, 1908, the two corporations had a common board of directors, each director of the plaintiff being also a director in the Corsicana National Land Loan Company, and each director in the Corsicana National Land Loan Company being a director in the plaintiff; that all of the officers of the Corsicana National Land Loan Company were also officers of plaintiff; that on said February 12, 1908, the Corsicana National Land Loan Company had to its credit on the books of the plaintiff $30,000, and on said

last named date the defendant and others, acting for the plaintiff and also acting for said Corsicana National Land Loan Company extinguished on the books of the plaintiff said credit of $30,000 and indorsed on the said notes a transfer of them without recourse to said Corsicana National Land Loan Company; that on said February 12, 1908, the said Fred Fleming and D. A. Templeton had become bankrupts and their assets were then being administered in bankruptcy, and defendant caused said notes to be proved up in the bankrupt Court as a claim against the bankrupt estate of said Fred Fleming and D. A. Templeton or one of them; that subsequently both Fred Fleming and D. A. Templeton were discharged as bankrupts, but out of the bankrupt estate of Fred Fleming there was realized 282 shares of the corporate stock in a corporation known as "Fleming Ranch & Cattle Company", organized under the laws of the State of Texas, the par value of which shares was $100; that said shares were delivered to the defendant and others and were issued in the name of the plaintiff; that said Fleming Ranch & Cattle Company had been liquidated since the institution of this suit and the liquidation thereof has resulted in the distribution to these 282 shares of net sums of money as follows:

	On February 17, 1911.....	$6,913.64
6	On June 27, 1911.....	336.
	On October 17, 1911.....	1,900.

each of which said sums of money operated respectively as a credit on the said notes as of the dates when received as aforesaid; that nothing has been received on account of said notes or indebtedness evidenced by them either by the plaintiff in his own name, or by Corsicana National Land Loan Company other than the proceeds of the liquidation of said Fleming Ranch & Cattle Company.

VII.

Plaintiff further avers that, subsequent to the transactions hereinbefore set forth, the Board of Directors of the

said Corsicana National Land Loan Company became composed of persons, a majority of whom were not directors in the plaintiff; and the board of directors of the plaintiff became composed of persons a majority of whom were not directors in the said Corsicana National Land Loan Company; that on, to-wit, the 11th day of January, A. D. 1910, the said Corsicana National Land Loan Company, acting through its board of directors, demanded of the plaintiff the return, by the plaintiff, of said $30,000 which the plaintiff had received of the funds of said Corsicana National Land Loan Company, and tendered back to the plaintiff the notes which the said Corsicana National Land Loan Company had received from the plaintiff, as aforesaid, together with said shares of stock, as aforesaid, and the plaintiff, after investigating the justness of said demand, on, to-wit, the 14th day of January, A. D. 1910, paid to the said Corsicana National Land Loan Company the full amount of said $30,000, together with interest thereon, at the rate of 6% per annum from the 12th day of February, 1908, by selling and transferring the ownership of the Corsicana Cotton Mill property, then of the reasonable value of more than $70,000, to said Corsicana National Land Loan Company, in consideration of $35,000 of notes of said vendee, and the surrender of said $30,000 Fred Fleming and D. A. Templeton notes, and received from said Corsicana National Land Loan Company the said notes of
7 Fred Fleming and D. A. Templeton and also the said shares of stock which had been received by the said Corsicana National Land Loan Company, through the bankruptcy proceedings aforesaid. And the plaintiff avers that the said Corsicana National Land Loan Company had not received, on account of said notes while it held them, anything except the shares of stock aforesaid; that the equitable title to said notes and to all of the property of Corsicana National Land Loan Company, throughout these transactions, was always in the plaintiff, and the beneficial interest in all of the property of said Corsicana National Land Loan Company remained continually in the plaintiff while said notes

of Fred Fleming and D. A. Templeton were being handled by the defendant and other officers of the plaintiff in the name of Corsicana National Land Loan Company; that at the most only the naked legal title to the said notes or any other property placed in Corsicana National Land Loan Company vested therein, so that any damage suffered by the said Corsicana National Land Loan Company was a direct loss and damage to the plaintiff.

VIII.

The plaintiff further represents that on account of the said acts of the defendant, hereinbefore set forth, the plaintiff has suffered a loss in its loans, evidenced by the notes of said Fred Fleming and D. A. Templeton, aforesaid, in that the plaintiff has not been and is not now able to collect the loans represented by said notes, further than said collateral corporate stock; and that said loans, other than as they have been paid through the sale of said collateral corporate stock, are totally and wholly uncollectible, and cannot be collected; and that the loss to the plaintiff, after crediting thereon the proceeds of said capital stock, amounts to at least the sum of $30,000. That said last named sum has been lost to the plaintiff by occasion of the illegal acts of the defendant, in the handling of the plaintiff's funds under the trust imposed upon and reposed in him, by the laws of the United States governing the acts and conduct of directors in banks organized under the National Banking laws of
8 the United States, as was the plaintiff.

IX.

That the matter and amount in controversy in this suit exceeds, exclusive of interest and costs, the sum of three thousand ($3,000) dollars, and is of a civil nature, cognizable at law.

X.

Wherefore, premises considered, the defendant having answered herein, the plaintiff prays that it have judgment

for its said damages and for costs and for such other and further relief as it may be entitled to in the premises, and as in duty bound plaintiff will ever pray.

RICHARD MAYS,
ETHERIDGE, McCORMICK
& BROMBERG,
Attorneys for Plaintiff, Corsicana National Bank of Corsicana, Texas.

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9 AMENDED ORIGINAL ANSWER OF THE DEFENDANT.

Filed Jan. 11, 1916.

Now comes defendant in above entitled cause, leave of Court being first had and obtained, and amends his pleading herein under Section 274-A, of the Judicial Code, and answering plaintiff's third amended original petition herein filed January 11, 1916, pleads as follows:

I.

Defendant demurs to said petition and says the same is insufficient in law, and of this he prays the judgment of the Court.

II.

Defendant demurs to said petition and says that if same shows any cause of action against defendant, said cause of action is cognizable in equity and not at law, and of this he prays the judgment of the Court.

III.

Defendant demurs to said petition, because it appears therefrom, that if said notes described therein evidenced

excessive loans, plaintiff suffered no loss or damage by reason thereof, because he says, it appears from said petition, that on February 12, 1908, Corsicana National Land Loan Company purchased said notes from plaintiff, paying it therefor the full amount of said notes, and of this he prays the judgment of the Court.

IV.

Defendant says, that plaintiff's cause of action, if any it ever had against defendant, accrued more than two years prior to the institution of this suit and was barred by the Two Year Statute of Limitations of the State of Texas prior to the institution of this suit, and he pleads said Statute of Limitation in bar of this action, and of this he puts himself upon the country.

Not waiving any of the foregoing demurrers or plea, but expressly reserving and insisting on same, defendant pleads further as follows:

V.

Defendant denies all and singular the allegations of fact in plaintiff's petition contained, and of this he puts himself upon the country.

VI.

Defendant denies that a loan of $30,000.00 was made to Fred Fleming and D. A. Templeton as partners or otherwise, or to the partnership of Fleming & Templeton, or that two loans of $15,000.00 each were made to Fred Fleming and D. A. Templeton as partners or otherwise, or to the partnership of Fleming & Templeton. He says the fact is, that on or about June 10, 1907, Fred Fleming borrowed from and the plaintiff loaned to him $15,000.00, and the said Templeton borrowed from and the plaintiff loaned to him $15,000.00. That while each of said borrowers was then of high standing personally and financially and entitled to the credit given, plaintiff,

always desirous of obtaining all the security it reasonably could for its loans, requested said borrowers to become sureties, one for the other, on aforesaid loans, which they respectively agreed to do, and in pursuance and execution of said agreement, said Templeton signed as surety the note executed by said Fleming to plaintiff, evidencing the $15,000.00 borrowed by said Fleming, by writing his name beneath that of said Fleming, and said Fleming signed as surety the note executed by said Templeton to plaintiff, evidencing the $15,000.00 borrowed by said Templeton, by writing his name beneath that of said Templeton, each thereby binding himself as the other's surety. That when said notes so executed fell due in December, 1907, plaintiff, believing said borrowers wholly solvent and responsible, at their request, renewed said notes for an additional six months, taking new notes, in all respects like the original notes, except that they matured June 10th, 1908.

11 VII.

Defendant further alleges, that on and prior to June 10, 1907, said Fleming and said Templeton had announced in the local papers of Corsicana, Texas, and in letters mailed by them to the business public, that the partnership theretofore existing between them, under the firm name of Fleming & Templeton, had been dissolved. That at said date, the business at Corsicana had been closed and the partnership sign removed from the building in which said firm had formerly done business. That in the negotiations for aforesaid loan, each of said borrowers informed defendant, that said firm of Fleming & Templeton had been dissolved; that when making aforesaid loans, said plaintiff and defendant in good faith believed said firm had been dissolved and treated and dealt with each of said borrowers individually and not as a partnership or partners, and took the individual obligation of said borrowers for the money loaned and not the obligation of any firm or partnership.

Upon information and belief, defendant alleges, that said firm of Fleming & Templeton had in fact been dissolved on and prior to June 10, 1907.

VIII.

Defendant says it is not true, that said loans were, or either of them was, excessive. That prior to the making of said loans, neither of said borrowers was indebted to plaintiff in any sum or thing whatsoever, and that at said date the capital and surplus of plaintiff was in excess of two hundred thousand dollars. That the liability of a surety on a note is not such liability as must be included in the determining of the amount of one's liability to a National Bank under Section 5200 of the Revised Statutes of the United States; that there was no purpose or intention on the part of plaintiff or of this defendant, in the making of aforesaid loans, to violate or evade, and they did not violate or evade, aforesaid Section 5200.

12

IX.

Defendant says that if said loans were, or either of them was, excessive, (which he expressly denies) that no loss or damage of any character resulted therefrom to plaintiff, because he says, that on or about February 12, 1908, Corsicana National Land Loan Company purchased from plaintiff without recourse on it both of aforesaid $15,000 renewal notes, and paid to plaintiff therefor in cash the full amount due thereon, and said plaintiff then and there indorsed said notes without recourse and delivered same to said Land Loan Company.

X.

Defendant says, while it is true, that shortly before the institution of this suit a change was brought about in the personnel of the board of directors of said Land Loan Company, so that a majority of them were not directors in plaintiff; that the change was formal only

and not real; that said new directors so substituted were the creatures and puppets of J. A. Thompson, President of plaintiff, and certain directors of plaintiff acting with him, who together owned more than a majority of the stock of plaintiff and of said Land Loan Company and controlled said corporations. That said Thompson and his said associates caused said directors to be elected, and to qualify them, gave to each of them a share of the stock of said Land Loan Company, which constituted the only interest of aforesaid directors in said Land Loan Company; that from said new directors so created, the officers of said Land Loan Company were elected. That said change in said Board was wrought by said Thompson and his associates to create the appearance that said Land Loan Company and its interests were in the hands of directors and officers independent of and in no way dominated or controlled by plaintiff or those controlling plaintiff. That the real purpose of Thompson and associates in creating this apparently independent board was to have it take such action as might be thought necessary by himself and associates to create in plaintiff a cause of action against this defendant on notes then belonging to said Land Loan Company. That accordingly, said Thompson and his associates, through their
13 agents and creatures, directors and officers of said Land Loan Company, caused said Company, on or about January 11, 1910, to demand of plaintiff the return to said Land Loan Company, of said $30,000.00 or thereabouts paid by said Company to plaintiff, on February 12, 1908, for said notes. That said Thompson and associates and said plaintiff, not intending to comply with said demand, but intending to create the appearance of compliance therewith, went through the form of negotiating with their said agents, the nominal directors and officers of said Land Loan Company, and finally, as a result of said negotiations, the representatives of plaintiff agreed with said Land Loan Company, that plaintiff should convey to said Company, a certain cotton mill property at Corsicana, then belonging to plaintiff, and which it had for several years vainly attempted to

dispose of, and which, it had then been obliged to charge off. That under the terms of said pretended contract, said Cotton Mill was transferred by plaintiff to said Land Loan Company, and said Land Loan Company, as the price and purchase money thereof, executed and delivered to plaintiff its note for $35,000.00 payable to plaintiff and the two renewal $15,000.00 notes owned by it as aforesaid, and the Fleming Cattle Company stock held by said Company as collateral to said renewal notes. Defendant says, that by said transaction, plaintiff did not in fact pay to said Land Loan Company anything for said $15,000.00 notes, because, defendant says, said cotton mill did not exceed in value the remainder of the price paid by said Company to plaintiff for said mill. Defendant says, that he had no knowledge of aforesaid transaction between said plaintiff and said Land Loan Company prior to or at the time of its consummation and that the first knowledge or notice he received of said transaction was when it was testified to by witness in this case. Defendant says, that aforesaid attempt to create a cause of action against him is fraudulent, void and without legal effect, and does not change his status or relation to aforesaid loans and notes, and does not create a liability as against him which did not exist prior to such fraudulent transaction. That in the

14 doing of all of aforesaid things, said Thompson and his said associates acted as the officers and directors of plaintiff. Defendant says, that if in fact plaintiff has suffered any loss by the transactions set out in its said petition, such loss is the direct and proximate result of the transaction aforesaid, by which plaintiff acquired said cotton mill and is self-inflicted and was not caused by aforesaid loans or either of them, whether excessive or not.

XI.

Defendant says, that the transactions of making the loans complained of and thereafter selling the notes taken to the Land Loan Company were not the transactions of defendant, but of plaintiff through its duly authorized

officers and agents, of which defendant was one, and that the buying of said notes by said Land Loan Company was not defendant's transaction, but that of said Company through its officers and agents, of whom defendant was one. That said transactions were had and made with the full knowledge, acquiescence and approval of the directors and officers of aforesaid corporations and the persons interested in them. That one of the great inducements moving plaintiff to make said loans complained of was to obtain the deposits and banking business of Fleming & Templeton at Corsicana, then in liquidation, and which, by the making of said loans, it did obtain, which acquisition was then believed to be and was of great value to plaintiff. That the Corsicana National Land Loan Company, while a distinct legal entity, was created and chartered by the same persons who hold the stock of plaintiff and the stock of the two corporations was held by the same persons and in the same proportions up to just prior to the institution of this suit. That one of the purposes of its incorporation was to take over from plaintiff any undesirable security or asset that it might in the course of its banking business find among its assets, so as to keep the Bank clear of doubtful assets and its credit high, and to make loans and transactions of a character that a National Bank was not authorized to make. That with the full knowledge of the officers, directors and persons interested in both of said
15 corporations, and pursuant to aforesaid purpose, the Bank had from time to time transferred to said Land Loan Company doubtful or bad assets, and no question had or has ever been raised to any such transactions, except that involved in this suit, and no objection from any source had been raised to that, so far as defendant is informed, until just prior to the institution of this suit. That said loans complained of were made, renewed, and notes therefor sold to said Land Loan Company with the full knowledge and approval of the officers and directors of each of said corporations. That shortly after said loans were originally made, they were passed on by plaintiff's Finance Committee and Board of Directors, ac-

quiesced in and approved by them. That said Land Loan Company, after acquiring said notes in February, 1908, with full knowledge of the value thereof, acquiesced in said transaction and sought to collect said notes by making proof of same in bankruptcy against the estate of said Fred Fleming. That not only did said plaintiff and said Loan Company approve and acquiesce in the making of said loans and their sale to said Company up to the date defendant was connected with said corporations, but continued to do so continuously thereafter and until very shortly prior to the institution of this suit. They permitted defendant to rely upon the validity of said transactions and sell his stock in said Companies, plaintiff and said Land Company, to said Thompson, or to said Thompson and his associates, on the basis, that said transactions were in all respects approved, satisfactory and valid. That at the dates of the transactions aforesaid, defendant was the owner of slightly more than one-fourth of the stock of both of said corporations and the Jesters were the owners of slightly more than one-fourth of said stock. That in the spring or summer of 1909, and some time prior to July 1st, 1909, defendant and said Jesters sold their stockholdings in both of aforesaid corporations to said Thompson or to him and his associates. That prior to said sale, said purchasers investigated the financial status of said corporations and were made acquainted with all the facts and circumstances surrounding the making, renewal and

16 sale of the loans complained of, and with the fact that said loans were of little value, except what could be realized from the Fleming Cattle Company stock held as collateral. That the stock of said Land Loan Company was sold to said purchasers on the basis that it was of little or no value, because said $15,000.00 notes had no value, except the collateral. That said Thompson and associates acquired in said purchase the control of both corporations and still retain it and from the consummation of aforesaid stock purchase have exercised it with the full knowledge of all the facts and circumstances hereinbefore set out.

Defendant says, that notwithstanding the new management of plaintiff had full knowledge as aforesaid of all the facts attending aforesaid transactions at the time they became interested in plaintiff, that plaintiff, nevertheless, made no complaint and never intimated its dissatisfaction with any of aforesaid transactions until just prior to the institution of this suit. Defendant says, that plaintiff accepted all the benefits accruing to it from aforesaid loans, the acquisition and liquidation of the business of said Templeton and Fleming; that it permitted said Thompson and associations to acquire defendant's stock in said corporation at a price based upon the faith that said transactions complained of were in all respects valid and approved, and that no liability whatsoever in relation to them rested upon defendant, and made to defendant its first objection to any of said transactions more than two years and a half after said loans were made, and approximately two years after said notes had been sold to said Land Loan Company, and many months after the purchasers who acquired defendant's stock in said corporations on the faith that said transactions were approved and valid, (and much below the value of said stocks, if this suit is allowed to prevail) had been in control of said corporations. By reason of all which, plaintiff is estopped from now calling in question the making and renewal of aforesaid loans and the sale thereof to said Land Loan Company, and was estopped

17 from cancelling said sale of said notes to said Land Loan Company, if same had otherwise been in its power and actually in good faith done, which he denies, and is estopped from now attempting to hold this defendant liable for any loss or damage arising out of said loans, if excessive. And defendant pleads all of said facts in estopped and says plaintiff should not be permitted to further prosecute this suit.

All of which defendant is ready to verify.

W. J. McKIE,
CULLEN F. THOMAS, and
HENRY C. COKE,
Attorneys for Defendant

18 PLAINTIFF'S FIRST SUPPLEMENTAL PETITION.

Filed Jan. 11, 1916.

Now comes the plaintiff and having first obtained leave of the Court files this its first supplemental petition herein in reply to the defendant's amended answer filed herein on the 11th day of January, 1916, and says:

I.

1. The plaintiff demurs to the 4th paragraph of defendant's said amended answer wherein the defendant pleads the statute of two years limitation herein, because it appears from the allegations of plaintiff's petition that the cause of action therein plead is not such an one as would be barred by the two years statute of limitation of the State of Texas, and of this the plaintiff prays the judgment of the Court.

2. Plaintiff demurs to the 6th paragraph of the defendant's said amended answer because it says that said paragraph of said answer constitutes no defense either in whole or in part to the plaintiff's cause of action, and of this the plaintiff prays the judgment of the Court.

3. Plaintiff demurs to the 7th paragraph of the defendant's said amended answer because it says that said paragraph of said answer constitutes no defense either in whole or in part to the plaintiff's cause of action, and of this the plaintiff prays the judgment of the Court.

4. Plaintiff demurs to so much of the 7th paragraph of the defendant's said amended answer as pleads his evidence, his information, and his belief, neither of which is material to the issue herein, and of this demurrer the plaintiff prays the judgment of the Court.

5. Plaintiff demurs to so much of the 8th paragraph of the defendant's said amended answer as alleges the

legal effect of Section 5200 of the Revised Statutes of the United States because the same is a matter of law and not an issue of fact, and of this it prays the
19 judgment of the Court.

6. The plaintiff demurs to so much of the 8th paragraph of the defendant's said amended answer as alleges that the defendant did not intend to violate or evade the law in making the loans described in the plaintiff's petition, and of this it prays the judgment of the Court.

7. The plaintiff demurs to the 10th paragraph of the defendant's said amended answer except as to that part thereof that alleges the value of the mill property and that the plaintiff paid the Land Company nothing for the Fred Fleming and D. A. Templeton notes, because it says that the facts set forth therein do not constitute a defense either in whole or in part to the plaintiff's cause of action; and of this it prays the judgment of the Court.

8. The plaintiff demurs to the 11th paragraph of the defendant's said amended answer because it says that the facts set forth therein do not constitute a defense either in whole or in part to the plaintiff's cause of action, and of this it prays the judgment of the Court.

RICHARD MAYS,
ETHERIDGE, McCORMICK &
BROMBERG,
Attorneys for Plaintiff.

II.

9. In the event that said demurrers are overruled and the plaintiff is required further to answer to the averments contained in the defendant's said amended answer, the plaintiff comes by attorney and denies each and every allegation contained therein, and demanding strict proof thereof puts itself upon the country.

10. Further answering to the said amended answer of the defendant, comes the plaintiff and replying par-

ticularly to that part of the defendant's said amended answer setting up the two years statute of limitation, says that in the interval between the accrual of the plaintiff's cause of action herein and the institution of this suit, the defendant was absent from the State
20 of Texas, so that process could not be served upon him, in the aggregate as much as, to-wit, six months; and that from the time of the accrual of the plaintiff's cause of action until May, 1909, the plaintiff was under the control and management of defendant and his associates whose acts gave rise to the cause of action herein declared on against the defendant, and the defendant is estopped to claim that any time prior to the 1st of May, 1905, should be included in computing the period of limitation herein, and of this it puts itself upon the country.

RICHARD MAYS,
ETHERIDGE, McCORMICK &
BROMBERG,
Attorneys for Plaintiff.

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21 JUDGMENT.

From Minutes of U. S. Dist. Court, Vol. 8, page 538.

This day came the parties by their attorneys and thereupon came on to be heard the defendant's exceptions to the plaintiff's petition, contained in the defendant's amended answer filed herein on January 11th, 1916, and the argument of counsel being heard it is the opinion of the Court that the law is for the plaintiff on the defendant's exceptions number one, two and three to the plaintiff's third amended original petition filed herein on the 11th day of January, 1916.

It is therefore considered by the Court that the said exceptions numbered one, two and three of the defendant to the plaintiff's said third amended original petition be and they are hereby overruled, and that the plaintiff recover against the said defendant its costs by occasion of the said exceptions.

And thereupon came on to be heard the plaintiff's demurrers to the defendant's amended answer filed herein on the 11th day of January, 1916, contained in the plaintiff's first supplemental petition filed herein on the 11th day of January, 1916, and the argument of counsel thereon being heard it is the opinion of the Court that the law is for the plaintiff as to the fourth demurrer addressed to the seventh paragraph of defendant's said amended answer and as to the fifth demurrer addressed to the eighth paragraph of the defendant's said amended answer, and as to the sixth demurrer addressed to the eighth paragraph of the defendant's said amended answer, and as to the eighth demurrer addressed to the eleventh paragraph of the defendant's said amended answer.

It is therefore considered by the Court that the plaintiff's said demurrer number four addressed to the seventh paragraph of the defendant's said amended answer, and the plaintiff's said demurrer number five addressed to the eighth paragraph of defendant's said amended answer, and the plaintiff's said demurrer number six addressed to the eighth paragraph of defendant's said amended answer, and the plaintiff's said demurrer number eight addressed to the eleventh paragraph of the defendant's said amended answer be and each of them is hereby sustained, and that the plaintiff recover against the defendant its costs by occasion of said demurrers.

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And it is the opinion of the Court that as to the plaintiff's first demurrer addressed to the fourth paragraph of the defendant's said amended answer, and as to plaintiff's second demurrer addressed to the sixth paragraph of defendant's said amended answer, and as to the plaintiff's third demurrer addressed to the seventh paragraph of defendant's said amended answer, and as to the plaintiff's seventh demurrer addressed to the tenth paragraph of defendant's said amended answer, the law is for the defendant.

It is therefore considered by the Court that the plaintiff's said demurrers number one addressed to the fourth paragraph of defendant's said amended answer, and number two addressed to the sixth paragraph of defendant's

said amended answer and number three addressed to the seventh paragraph of defendant's said amended answer, and number seven addressed to the tenth paragraph of defendant's said amended answer be, and the same are overruled, and that the defendant recover against the plaintiff his costs by occasion of the said last described demurrers. To which action of the court in overruling its said demurrers numbered one addressed to the fourth paragraph of defendant's said amended answer, and number two addressed to the sixth paragraph of defendant's said amended answer, and number three addressed to the seventh paragraph of the defendant's said amended answer, and number seven addressed to the tenth paragraph of the defendant's said amended answer, and to the overruling of each of them the plaintiff then and there in open Court, when the same were so overruled, excepted. And at the same time in open Court deft. excepted to the rulings of the Court in overruling its demurrers to the plaintiff's petition and in sustaining plaintiff's said demurrers Nos. 4, 5, 6, and 8 to deft's. answer.

23 And thereupon came a jury of good and lawful men, who being first duly selected, empaneled and sworn and having heard the testimony, the argument of counsel and the instruction of the Court, under peremptory instruction of the Court returned into Court the following verdict, to-wit:

"We, the jury, find for the defendant Samuel Wistar Johnson.

M. C. JONES, Foreman."

It is therefore considered by the Court that the defendant Samuel Wistar Johnson go hence without day and that he recover of the plaintiff, Corsicana National Bank of Corsicana, a corporation, his costs in this behalf expended, except as costs have heretofore in this judgment been adjudged against him, and that execution issue.

24 BILL OF EXCEPTIONS.

Filed March 2nd, 1916.

In the District Court of the United States for the Northern District of Texas, At Dallas, At Law.

Corsicana National Bank, Plaintiff in Error,

vs. No. 2603.

Samuel Wistar Johnson, Defendant in Error.

Be it Remembered, That on the trial of the above numbered and entitled cause, on the 14th day of January, 1916, there came on to be heard the plaintiff's demurrers contained in Plaintiff's First Supplemental Petition filed herein on the 11th day of January, 1916 to the Defendant's Amended Answer filed herein on the 11th day of January, 1916, and the Court overruled the Plaintiff's first demurrer addressed to the Fourth Paragraph of the Defendant's said Amended Answer, to which action of the Court the plaintiff then and there in open Court, and before the jury retired, excepted;

And the Court overruled the plaintiff's second demurrer addressed to the Sixth Paragraph of said Amended Answer, to which action of the Court the plaintiff then and there in open Court and before the jury retired excepted;

And the Court overruled the plaintiff's Third demurrer addressed to the Seventh Paragraph of the defendant's said Amended Answer, to which action of the Court the plaintiff then and there in open Court, and before the jury retired, excepted.

And the Court overruled the plaintiff's Seventh demurrer addressed to the Tenth Paragraph of Defendant's said Amended Answer, to which action of the Court the plaintiff then and there in open Court and before the jury retired, excepted;

Be it further remembered, That on the trial of the above numbered and entitled cause on the 14th day of January, 1916, the parties hereto to sustain their respective contentions offered in evidence the following testi-
25 mony, all of which was received in evidence:

AGREEMENT.

We agree that the amounts plead by plaintiff as having been realized out of liquidation of Fleming Ranch & Cattle Company are the true amounts.

(Signed) RICHARD MAYS,
ETHERIDGE, McCORMICK & BROMBERG,
Attorneys for Plaintiff.
HENRY C. COKE,
COCKRELL, GRAY & THOMAS,
Attorneys for Defendant.

The deposition of the defendant, SAMUEL
26 WISTAR JOHNSON was offered, and he testified as follows:

I was formerly cashier and then vice-president of the Corsicana National Bank. I cannot remember the dates when I became either cashier or vice-president. I was cashier before I was vice-president, and I was vice-president as early as 1907. My connection with the bank as director and vice president terminated in the spring of 1909. I was vice-president at the time the loans were made to Mr. Templeton and Mr. Fleming. The capital and surplus of the bank then was each $100,000.00. Prior to June 19, 1907, the firm of Fleming & Templeton was engaged in a private banking business in Corsicana. They afterwards moved to Dallas and engaged in conducting the Western Bank & Trust Company. I have no knowledge relating to the method adopted by Fleming & Templeton in conducting their business banking at Corsicana.

When they terminated their business there, Fleming & Templeton were indebted to depositors, but in what sum I do not know. I took over their deposits when Fleming & Templeton ceased business at Corsicana for the Corsicana National Bank. The deposits were between $30,000.00 and $40,000.00. I do not remember the exact amount. They did not turn over any bills receivable to the plaintiff bank. Only the deposits were turned over. Aside from taking over these deposits, there was no other dealing with Fleming & Templeton of any nature whatever, directly or indirectly, as regards the Corsicana National Bank. Prior to June 10th, I think Mr. Charles Jester was the largest stockholder in the Corsicana National Bank. He was president of the bank. I think I was a salaried officer of that bank during 1907, but I am not positive as there was a time when I was not a salaried officer. I think Mr. C. W. Jester and I, as president and vice-president, received the same salary for one or two years prior to that. There was a time when I received less salary than the president. There was no loan made by the bank to Fleming & Templeton in June 1907. D. A. Templeton and Fred Fleming separately did negotiate with the Corsicana National Bank for a loan of $30,000.00 about that date, $15,000.00 each, through two officers of the bank directly and two others indirectly.
27 They were Mr. Elliott, assistant cashier, George E. Jester, cashier, George T. Jester, director, and myself. Mr. A. G. Elliott was not a director but was trusted officer of the bank and very influential in its management. These negotiations took place in Corsicana; I think there were several negotiations. I think they covered one day, but I am not quite certain. Fleming & Templeton were both in Corsicana at that time, but I could not say whether they both negotiated with George T. Jester or not; they both did with me. I do not recollect whether Fleming & Templeton prepared two notes for $15,000.00 each and mailed the Corsicana National Bank from Dallas, or whether two notes were returned to them at Dallas which we declined to accept and prepared additional notes and sent them along with the others for their

signature. These were details that were under the supervision of Mr. Elliott, the assistant cashier, and the Cashier. I do not remember whether I gave any directions or not. One of the considerations of this loan was the transfer of the deposits and with it the accounts of Fleming & Templeton. That loan was not made in anticipation of the fact that some of these depositors would not agree to be transferred and would want to be paid, and therefore to enable Fleming & Templeton to pay such depositors as needed the money. There was nothing mentioned, as far as I remember, concerning our using our good offices and influence to have all the savings depositors remain with Fleming & Templeton in Dallas. My understanding is that during the year 1907 the Western Bank & Trust Company had branches at Mexia and several other points in Texas, and not Fleming & Templeton, but I do not know. I do not know anything about the affairs of Fleming & Templeton outside of Corsicana, and not very much about that. To the best of my knowledge they had dissolved after they went out of the banking business at Corsicana. Each told me that they had dissolved and outlined their plans of action; each led me to believe positively that they had done so, and the uses to which they expected to put this money they were borrowing. It was as strong proof as I wanted without seeing the writing of dissolution. It is not a fact that I agreed to
28 loan these two men $30,000.00 of the bank's money on or about the first of June, 1907. It was not at my suggestion that the amount was divided up into two notes of $15,000 each. On the contrary, they tried to borrow the money separately without the other going on the other's security, tried to make a separate and distinct loan without any reference whatever to the other, and each told me what he proposed to do with the money. I know the loaning capacity was very much more than $20,000 at that time. I knew at that time that the bank could not loan to any individual, firm or corporation or association of persons an amount in excess of $20,000. After these notes were executed by Fred Fleming and D. A. Templeton, I think it is true that the Corsicana National

Bank drew a piece of exchange for $30,000 less the interest for six months, payable to the order of Fleming & Templeton, and mailed same to them in Dallas, although it came to my knowledge since. Though C. W. Jester, president of the bank, and under the advice, the two loans of $15,000.00 each, one to Fred Fleming and the other to D. A. Templeton, were renewed for a period of six months from their maturity, about December 1907. I think the president instructed me to renew those loans it was done under his advice. I did not personally handle the notes. I may have given the final word in behalf of the bank as to whether the paper would be extended for a period of six months from December 10, 1907. It is not a fact that the negotiations with Fleming & Templeton were conducted entirely by me. As I remember it, I did not confer with either of those men in person regarding the extension. The records of the bank will show whether there was any correspondence. C. W. Jester, the president, and I conferred together and he instructed or advised that they be renewed. I concurred with the president's views on the question. Mr. Elliott, the assistant cashier, had charge of the notes and under the instructions of the president and with my sanction he did renew the notes. The notes were prepared by him and the letter written by him and may have been signed by him, although it
29 was usually my duty to do that in matter of that character. Prior to the renewal of these notes in December, 1907, I think I made some inquiry into the financial standing of Fred Fleming and D. A. Templeton, and if I did so it was for the bank and not for myself individually, but as vice-president of the bank. My recollection is that before the renewal I had seen an account of a deed of trust executed by Fred Fleming to secure certain creditors and depositors in the Western Bank & Trust Company in Dallas, but I did not know that the Western Bank & Trust Company was being carried by the Clearing House Association of Dallas. Just prior to this renewal, in December, 1907, I think I heard that they were in straightened circumstances for actual cash, like every other bank in the country during

the panic. I remember that prior to making the first loan in June, 1907, the Corsicana Cotton Mills was a customer of the bank, and we had several dry goods. Schwarz & Company, cotton men, were customers. I do not remember a communication to the bank from Mr. Kane, deputy comptroller of currency, on June 20, 1907, in which the attention of the officers of the bank was called to the fact that the loans to the cotton mill, Schwarz & Company and the dry good house exceeded the limit permitted by the National Banking laws. I do not remember that there was any such correspondence; the record would show it. I have no recollection of a communication on June 22, 1907, addressed to the president of the Corsicana National Bank signed by Mr. Ridgely, Comptroller of the Currency, concerning excessive loans theretofore made. I think the following papers handed me were received by the bank: Letter dated Washington, June 20, 1907, to the Corsicana National Bank, signed by T. P. Kane, Deputy Comptroller, and another letter dated Washington, June 22, 1907, addressed to the President of the Corsicana National Bank by Mr. Ridgill, Comptroller, and another letter dated Washington, February 26, 1908, addressed to the President of the Corsicana National Bank, signed by T. P. Kane, Deputy Comptroller, and another letter dated March 11, 1908, addressed to the Comptroller of the Currency, Washington, D. C., was sent in reply to
30 the last named letter, and same was signed by the directors of the Corsicana National Bank, including myself. After we received Communication of February 26th, from the Treasury Department, we did not charge off the two Fleming & Templeton notes except by a sale of the notes for cash. If the 12th of February, 1908, is the correct date when the sale was made, then that is the date the loan was taken out of the assets of the bank. The records will show whether that was just six days after Hartford's examination of the bank; I do not remember. It was not impressed on my mind that Hartford's examination had anything to do with it. I do not remember the date, but sometime about 1907, a corporation by the name of Corsicana National Land & Loan Com-

pany was organized and chartered. I think Mr. Jester employed counsel for the organization. At the time that was to be an organization composed entirely of the stockholders of the Corsicana National Bank. I do not remember that there was any agreement between the stockholders of the Corsicana National Bank with reference to this loan company. I think I got from W. J. Mackey the letter you hand me, dated May 11, 1907, three days before the organization of this loan company, addressed to Dr. S. W. Johnson and Mr. C. W. Jester pertaining to this incorporation. With reference to the trust agreement mentioned therein, I think it was suggested, I do not know by whom, that some sort of an agreement be entered into by the stockholders as to the stock, the particulars of which I have forgotten. My recollection also is that nothing further was done about the matter. Every stockholder in the Corsicana National Bank took a like number of shares in the loan company. I think the instrument you hand me is the original stock agreement and subscription. The stockholders in the Corsicana National Bank were identical with the stockholders in the loan company, and continued to be the same up until the time I sold out my holdings. Whenever there was a sale of bank stock, it carried with it that particular shareholders stock in the loan company, but there was no agreement of that character. Up until my associates and
31 myself sold out in the spring of 1909, both the loan company and the bank had the same president and vice-president and directors; and Mr. Elliott, who was Assistant Cashier of the bank, was secretary of the loan company. The records and minutes of both corporations were kept in the vault of the bank. The document you hand me is a copy of the charter of the loan company. The names E. W. Johnson and E. N. Johnson which appear in that charter are not related to me. E. N. Johnson is the son of E. W. Johnson. The four notes you hand me—being the two notes for $15,000 dated June 10, 1907, and the two dated December 10, 1907, in renewal of the first two—are made out upon the printed customer's notes of the Corsicana National Bank. I do not recog-

nize the handwriting on them. The draft you hand me which I presume is the draft sent to Fleming & Templeton for these two notes given on June 10, 1907, is in Mr. Elliott's handwriting. He had authority, as Assistant Cashier, to draw the draft. This draft was not under my direction. The president of the bank was in Hot Springs, Arkansas, on June 10, 1907, and I was acting in his absence. I cannot say just how long he had been absent. The draft is for $29,100.00, which I presume indicates the interest had been taken out.

I think Fleming was adjudicated a bankrupt after the transfer of these two notes by the bank to the loan company. I think I superintended the matter of proving up these claims in bankruptcy. Pending the administration of the bankrupt estate of Fleming, Mr. Holloway, T. S. Miller, and J. E. Cockrell, a portion or all of his creditors, entered into the agreement a copy of which you hand me, with reference to the purchase of the Fleming Ranch & Cattle Company stock. I signed that agreement in behalf of and as vice-president of the Land & Loan Company. I do not remember whether any money was put up on the part of the land and loan company. I think Fleming put up collateral with some parties and these creditors possibly declined to go into the agreement by reason of having these securities. I remember there was to be an assessment, but just what it was for I don't remember. It might have been possibly to take up these securities. Acting as vice-president of the loan company, I made proof of these two notes in the Fleming bankruptcy matter and engaged the services of a lawyer for the purpose of seeing that the claim was properly attended to in the bankruptcy proceeding. It was in the latter part of May, 1909 in May anyhow of 1909 that I sold out my holdings in the Corsicana National Bank to Thompson and others. After that time I was absent from the state for a time, being in New York for a month or five weeks. I think that was the only time I was out of the city during the year 1909. On the night of January 5, 1910, I left the state, and returned in about a month. On the same day I returned, just a few hours afterwards, I was served

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with process in this suit. That was somewhere around the middle of February, I think. In the summer of 1908, I was absent in the West a month or six weeks, with Mr. Wofford and Carter Cervin. Mr. Wofford was not with us all the time the beginning of the trip; he was the latter part of it. During the summer of 1907, C. W. Jester, the president was away, and I did not go away that summer.

I was rather familiar with the sale of the properties of the Fleming Ranch & Cattle Company sometime ago by the owners of it, but had no interest in the properties whatever. I was a member of the board of directors of the ranch. My recollection is that the board of directors sold the land at four dollars an acre. Some cattle were sold before the sale of the land. I do not recollect just when the board by resolution voted the sale. I think it was within the last twelve months. The sale was just finished of all the assets about a month ago. At that time I think the land was all that the concern owned. Without knowing the details of it, I would say that the proceeds derived, after deducting liabilities and paying expenses, was divided among the then owners of the concern. I think I voted against the sale, because I thought the property was worth more money, and I advised Mr. Fleming and others; I think may be Mr. Knight and Mr. Holloway, not to vote for it.

33 I am 58 years old, have been engaged in the banking business I think about eight years, prior to which time I was actively engaged in the practice of medicine. I lived in Corsicana from 1883 until 1910. I was not connected with any other bank than the Corsicana National Bank. My first connection with that bank was as nominal cashier I may have been a director before I was a cashier, I would not say positively. During my eight years connection with the bank it made money, and we considered it very prosperous. When I became connected with it the book value was about $125.00, I think, and when I disposed of my interests, if you include the dividends which were paid out in order to organize the land and loan company, it was not far from $300.00 a share, but the book value was $250.00. During

my connection, ten, fifteen, and twenty per cent dividends were paid annually, and either sixty or seventy per cent one year, which later included a $50,000 special dividend. In June 1907, when these loans were made, C. W. Jester was president of the bank and I was acting vice-President. I know of no undue, unusual or unwarranted influence that I exercised over my associates in the bank or any improper or sinister influence I exercised in the management of the bank. In June, 1908, I owned 180 or 170 shares in the bank—somewhere around that—a little less than one fifth interest. My brother, Dr. Johnson, was the only member of my family owning any shares at that time, and he owned 50 shares. A week or so before June 10, 1907, Fleming & Templeton each told me that they had dissolved, and they had transferred before that time, I think all of the deposits of Fleming & Templeton to the Corsicana National Bank. They had sold their bills receivable and had authorized the Corsicana National Bank to notify the customers of their bank, particularly the depositors, that they had dissolved, and I think it was advertised in a local paper. It was the common opinion that they had dissolved and had left Corsicana; gone out of the building they had occupied. Both Fleming & Templeton lived in Dallas at the time the loans were made. They were both in Corsicana about the last of May or
34 the first of June—a week or so before the 10th of June—and Mr. Templeton called at the bank and told me that he and Mr. Fleming had dissolved partnership in every way; that they were winding up; closing out at Corsicana; that they had between $30,000 and $40,000 of deposits and mentioned who those depositors—the larger ones—were, some prominent men in the county, and stated that they were all friends of the Corsicana National Bank, and that if we could take over their deposits—that over that line of their business—that he believed that we could hold all of their business; that they would deposit enough money in the bank to take care of and pay these depositors; that he, Templeton, was buying out Fleming's interest in the Western Bank & Trust Company at Dallas; that he wanted to borrow $15,000

to make a payment on the purchase of that stock. He also told me that Fleming was going to devote his time and thought to his ranch in West Texas, and I think at the same time told me that Mr. Fleming would want to borrow a like amount, $15,000; that they had sold their bills receivable and notes and from the proceeds of them they would get enough money to take care of the deposits which they proposed to put into our bank, or whatever bank they made this deal with. I asked him what rate of interest and length of time they would want this money. I think he said twelve months, I am not sure of that, but he wanted it at six per cent. Of course he remarked how valuable it would be to the Corsicana National Bank to have the good will and the customers of the Fleming & Templeton bank, with them out of business and out of town. I told him that Mr. Jester was away, the president of the bank, and I did not feel like taking the responsibility of saying whether I would or would not make the loans, or whether the bank would, but that I would let them know; would take the matter under advisement and let them know. I gave him to understand, however, that I thought favorably of it. I think it was probably the next day that I discussed the matter with Mr. Elliott, assistant
35 cashier, Mr. George B. Jester, the cashier, and Mr. George T. Jester, one of the directors. These two, George E. and George T. represented Mr. C. W. Jester, President of the bank, who was absent at that time. They all three agreed that it would be a good thing for the Corsicana National Bank if the two loans did not aggregate more than the amount of money they were to deposit in the bank, and that the depositors whose deposits were transferred to us being friendly to us would likely remain with us, so we would not have to pay out any of the bank's money to take care of these depositors; that it would be a valuable acquisition to the bank, not only the deposits, but the influence of these customers of the Templeton & Fleming bank, so that I notified Mr. Templeton that we would make the loan, provided Mr. Fleming would go on his note. He insisted that he was perfectly responsible himself and did not want to ask Mr.

Fleming either to indorse or go on his note as security, and I think that I told him that while that might be true that a two-name paper was better than one; that the Department would look at it better, and for that matter he could indorse or go on Mr. Fleming's note. I asked him for a financial statement of his condition, and he gave it to me verbally; he said that he was worth one hundred thousand dollars over and above his indebtedness; that he owed very little; he also told me that Mr. Fleming was worth quite or more than half a million dollars. I spoke to him then about security in addition to the names, and he said it would be entirely agreeable to send down later on, if we insisted on it, some Western Bank & Trust Company stock to secure his note. I had as many as two or three conversations with Mr. Templeton, but I cannot be sure whether it was all one day, whether beginning in the morning and ending up in the evening or not, but I think they were notified the next day or within a day or two that when their agreement as to the transfer of the deposits were ready and the money deposited to take care of those deposits, the bank would make these loans. I don't know whether they were notified verbally or in writing. I conversed with Mr. Fleming in regard to these
36 loans on the same line exactly, except that I asked him if he wanted to borrow the money, and he said "Yes"; that he wanted $15,000; I told him then that Mr. Templeton wanted the same thing, and he said that Mr. Templeton was perfectly responsible and he did not care to go on his note; didn't want to do it, but he finally did it. He left me under the impression that he was not going to do it. He also told me that they had dissolved; that Mr. Templeton had bought his interest, or was buying his interest, in the Western Bank & Trust Company, and that he was going to devote his time to his ranch business. At the time of these conversations, both the firm of Fleming & Templeton, and each member personally, stood well financially. At that time my opinion was that there was no question about the responsibility of either Mr. Templeton or Mr. Fleming. Mr. Fleming had been in business in Corsicana alone for 22

or 23 years, and then Fleming & Templeton I would say eight or ten years, but I am not sure. I had known both of them since I had went to Corsicana in 1883, or 1884, and I regarded these loans as good financially. Under ordinary conditions I would not have hesitated to loan either Mr. Fleming or Mr. Templeton $15,000 on his own note, but at that time I would not have made these loans to these gentlemen, simply as loans. The motive for the loans was the transfer of the deposits and the good will and their retirement from business in Corsicana. The reason I would not have made the loans ordinarily at that time was that it was a season of the year when banks generally do not make outside loans, and the rate of interest was too low. We regarded the acquisition of their business as valuable, and it proved of great valuue, their depositors generally without exception, I think, becoming identified with our bank. Growing out of this, one of those customers of the Fleming & Templeton bank, Mr. A. M. Milliken, became shortly thereafter one of our directors, a very valuable one, of large means and very influential. These loans were concurred in by my associates in the bank.

37 There was personal consideration to me of any kind. There was no suggestion ever made by them to me that they were making this loan as a firm. I was familiar at that time with the banking law as to limitations on loans, and either of the $15,000 loans, either to Templeton with Fleming's name as surety, or to Fleming's without Templeton's name as surety, would have been within the limits of the law. There was no difference, so far as I know, in the routine of closing up this loan from an ordinary loan made in the bank. After the transaction was closed and the loans made, our finance committee, composed of George T. Jester, T. P. Kerr, and J. M. Bartlett, passed on them, and approved them. At subsequent monthly meetings they were discussed very freely, and there was no protest or objection. The president assumed his duties as acting president in the fall, and was there every day and all day. The renewal, in December 1907, was made openly and above board, with the knowledge of my associates in the

bank. Before renewing them I think we made injuiry as to the financial condition of Mr. Templeton and Mr. Fleming. I had before me that letter you hand me from D. A. Templeton dated December 7, 1907, in which he stated that there was no material change in their financial responsibility as it existed at the time the notes were given, except as might be considered due to the general situation affecting values. The renewals were made prior to their crush here in Dallas. I think I would not have made them had I known of this impending trouble. The renewal was passed on by the directors I do not know whether all of them or not. The directors composed the finance committee. They were: C. W. Jester, George T. Jester, C. L. (Lee) Jester, J. M. Bartlett, J. N. Milliken, T. P. Kerr, E. W. Johnson, (no kin to me, however), C. R. Terry, and myself. C. W. Jester, the president, was a good business man, and has since died leaving a good estate. All of them were men of means. The bank made a good trade when these notes were sold to the Corsicana Land & Loan Company in February, 1908, securing the face value of the notes in money, and at that time the representatives of the loan company were satisfied. When they got a new crowd to run the loan company and under the regime of my successor in the bank, dissatisfaction came. Mr. C. W.
38 Jester, president of the bank, made the transfer of the notes to the loan company without recourse. The purpose of the loan company, a state corporation, was to take such paper as the bank could not handle. It was organized by the stockholders of the bank and paid for out of the earnings of our bank. A special dividend was declared of $50,000 and the checks were distributed, written out to the different stockholders of the bank in proportion to the amount of stock they held. My recollection is that those checks were made payable or indorsed over by the different stockholders to the subscription stock in this Corsicana Land & Loan Company; it was indirectly the money that came from the $50,000 dividend. The loans of the Loan Company were largely real estate loans. It was to help out

the bank in every possible. There was never any loss to the Corsicana National Bank growing out of these loans. They were transferred, so far as I know, or juggled back by my successors in the banking business, John Thompson and Richard Mays. I sold my interest to John Thompson sometime in May, the latter part of May, 1909. He had been a stockholder in the bank at that time a few days only. Prior to our trade, he had purchased from the Jesters largely and Mr. Bartlett, I believe, all of which aggregated approximately 300 shares. Mr. Mays became identified with the bank about the same time as Mr. Thompson, I think. The negotiations resulting in this trade between Mr. Thompson and myself were pending as much as two weeks, I think possibly a little more, possibly a little less. He had opportunity to and did investigate the conditions of the bank. He knew the history of the Fleming & Templeton notes from the time the loan was made down to and including the sale to the loan company. I sold him my interest in both institutions at $275 a share, including the bank and loan Company. The book value of the bank stock at that time was approximately two and one-half. At the time I sold to him I knew he had bought out the Jesters. He practically forced me by threats of law suits through his attorneys to make a proposition
39 of give or take. He had three firms of lawyers, Prince & McLelland, Mr. Mays and Mr. Neblett, each one of whom called on me as his attorney, advising me, Mr. Prince particularly, that Thompson had employed counsel in Dallas, and that I had to give him the position of vice-president in the bank with a salary; that I had to permit the directors to elect him as vice-president at a salary; otherwise he would ask for a receiver for the bank. I understood that he would sue for representation on the board and that it would be carried to the Federal Court. At that time he was not even a member of the board of directors. At that time the Fleming notes and the Templeton notes as to the Corsicana Land & Loan Company was estimated at about $10,000 value; that was the amount of money expected to be collected out of the claims, which

were prorated to the Corsicana Land & Loan Company from the bankrupt estate of Fred Fleming. At that time it was the judgment of myself and associates that there was a loss on the Fleming loan and the Templeton loan of $20,000, and Mr. Thompson knew that. I think Mr. Mays also knew it, but I would not swear to that positively. When Mr. Thompson bought the Jester interests of about 300 shares and bought my interest and my brother's interest, that made a controlling interest in the bank, a majority of the stock. If I had known that the acquisition of my stock gave him a majority and that he would sue me for $30,000 I would not have sold to him at that figure. I understood that there was some correspondence between Mr. Mays and the Jesters that he would now sue them. I think the reason I was singled out was for spite, and because I had moved away from Corsicana in July, and was not there then. I know he consulted with Mr. Rice and Davis as to the advisability of bringing the suit. I don't know that the bank has ever brought any suit against George T. Jester. He is still living and is solvent. Neither has he ever brought any suit against George E. Jester or C. L. Jester, county judge, both of whom are worth this amount. I think the reason that out of the nine directors the bank now jumps on me was purely to harass me, and spite, vindictiveness. It is so regarded in Corsicana. If the bank gets a judgment against me for $30,000, Mr. Thompson, if he owns the controlling interest, would have at least $15,000. I understand Mr. Thompson has sold a part of the stock he bought from me and the Jesters. Mr. Mays was to get a part of it. My understanding was that he sold it at that same price he paid for it, or may be a little bit less, for their influence. Mr. Richard Mays holds the position of vice-president and attorney for the bank. I have been in Dallas pretty nearly two years, and my present occupation is president of the Lone Star Life Insurance Company.

Before I knew anything about it, the entire Jester interest was sold out to Mr. Thompson. Mr. Thompson at that time had established and was then conducting

the First State Bank at Corsicana. He sold out his interest in that bank for the Jester interests in the Corsicana National Bank without my knowledge or without my consent. Mr. Thompson demanded official recognition in the bank, and that started the friction in a business way between him and me that preceded your selling to Mr. Thompson. Prior to the secret deal between the Jesters and Mr. Bartlett and Mr. Thompson, my personal relations with Mr. Thompson had always been friendly and pleasant; we had never had any business transactions, I believe, of any character, and when he told me that he had bought the Jester's interests with an agreement of the Jesters that they were going to remain on the board of directors of the Corsicana National Bank regardless of my wishes or my friends' wishes long enough to make him (Thompson) vice-president with a salary attached I say up to that time our personal relations had been pleasant. I called my board of directors together, except the Jesters, and found that we had a tie on the board, four and four, as I remember. Mr. Milliken and Mr. Terry and some other member of the board, I don't just now remember, and myself, made four, and there were four represented Mr. Thompson, although they had disposed of all of their stock to Thompson except barely enough to keep them on board of directors to force Thompson in as vice-president of the bank. My directors stated that they would all resign if
41 Thompson was even made a member of the board of directors; that he was unsafe, not a business man, a large borrower, and that he was a dangerous man to bring into the bank at that time. The Jesters had exchanged their Corsicana National Bank stock for Thompson's stock in the First State Bank, a small concern, and they were going out as competitors of the Corsicana National Bank, remaining on the Corsicana National Bank's board of directors to force upon that board and upon that bank a man who was in every way in a business way unsatisfactory and, they thought, unsafe. It was in the face of that that I had the trouble with Mr. Thompson which finally resulted in my making a proposition

to him to give or take, and resulted in him buying the stock. That went along for about a month, and it was during this time when he could not get on the board of directors when the Jesters stood pat. They had a contract with him that they were to remain long enough to put him in as vice-president, of the bank, and of course he held them to their trade and they had to do it. When they found they could not do that I don't know but Mr. Mays assisted them. Now, without his ability to get on the board until at least the annual meeting of the board, we had correspondence with the Department on the question as to what should be done, and they put it up to us to elect a board, and we could not do it, as we were evenly divided. I felt in the interest of the institution that something should be done, and that was why the trade was made. At that time I did not advise with counsel, but before the controversy came up I did. We gave public notice through all the papers signed by numerous stockholders, giving a notice that a meeting of the shareholders of the Corsicana National Bank would be called to meet on Friday, the 28th day of May, A. D. 1909, at the office of said bank for the purpose of amending the articles of association and increase the board of directors from nine to thirteen, but I have forgotten the outcome of the meeting. We wanted to increase the board of directors so we could keep Thompson off. If I made any agreement with Mr. Thompson with reference to selecting a board of directors mutually agreeable to both of us, I certainly should have and would have carried it out. I don't remember having made it; I will
42 not say that I did or did not, because I don't remember.

My sale to Mr. Thompson was made upon my proposition, and under that trade I had the right to name a price per share and if he didn't want it at the price I named, I was to take his at that price. I named a price of $275.00 a share, which included and carried with it a like number of shares in the Land Company, and Mr. Thompson bought at that price. I do not know of any agreement between Mr. Thompson, or Mays for Thompson, and

the Jesters, by the terms of which their liability for this loan was not to be enforced against them. In the trade with the Jesters and Bartlett there was some four or five of them to retain enough stock to keep them in the board of directors until their scheme had been carried out; I don't know whether that deducted from the total amount agreed to be bought would have made Thompson's stock greater than mine or not; I have not calculated it; I think it was about the same, or may be a little more. The total amount Mr. Thompson bought I think approximated 300 shares. Dr. Clay Johnson and myself owned 230 or 240 shares; I don't remember the exact amount. The personnel of the finance committee which passed on these loans, and all of the loans of the bank, was George T. Jester, J. M. Bartlett, and Kerr. They made reports on all loans in writing, but I could not say how long after these particular loans that was done. If they had disagreed to the loan, they could have criticised it; they could have recommended that it be collected, and so on; they could have made a report upon it of some character. The records will show if they did; I don't think they did. Before Mr. Thompson bought out the Jesters, I recall that he and G. J. Heflin, president and vice-president respectively of the First State Bank, wanted to liquidate the First State Bank through the Corsicana National Bank. The first two gentlemen wanted to become identified as directors in the Corsicana National Bank, as stockholders. I put it up to the directors, and they turned it down flatly, upon the ground that Mr. Thompson and Mr. Heflin were undesirable for officers and directors or stockholders in the Corsicana National Bank,
43 and while liquidation would be desirable to increase the business of the Corsicana National Bank, that it would not offset the fact that these two gentlemen would become directors. That was practically unanimous. The matter was dropped then. Mr. Thompson and Mr. Heflin both discussed with me over a range of a year, I guess. In my talks with Mr. Thompson I never made any statement to the effect that it was a question of time when C. W. Jester would have to get

out of the bank, that he ceased to be of benefit to it, and that I would be glad to have a man like Mr. Thompson interested with me in the institution, and my relations were at all times very pleasant and cordial with Mr. Jester. Our ideas were the same and our notions of the bank the same, and while he frequently said that the time would come when he might want to retire, yet I always insisted that he remain with the bank—even at a time when he might get old enough to want to retire, that he still remain connected with the bank and draw his salary. Our relations were of the very best. At the time the Jesters sold to Mr. Thompson, they did not have any agreement with me that they would not sell their stock, but two or three years before that Mr. Charley Jester and I agreed that we were to hold our stock in common; if one sold the other would sell, and bought stock together—that contract was morally binding on both of us; we bought the stock jointly. At the time of the loans to Fleming and Templeton, my recollection is that they sold their bills receivable to Dunn & Talley, from which sale they derived sufficient money to pay the depositors which they put in the Corsicana National Bank; just whether it was done in money or exchange I don't recall. This loan of $30,000 was not made for the purpose of taking care of the winding up and adjustment of the Fleming and Templeton business at Corsicana. They told me they had dissolved their firm relations absolutely, in every particular; that they had dissolved so far as business in Corsicana was concerned, absolutely, so far as I know. I think yet that they had done so, because each told me of their plans following the dissolution. After the Corsicana National Bank took over the business
44 of Fleming and Templeton, the Corsicana National Bank, under my direction, prepared a letter to the Fleming & Templeton customers, and Fleming & Templeton prepared and gave a statement to their customers. The letter you hand me of date May 31st I would say is a copy of the letter Fleming & Templeton prepared. We did not buy a nickel's worth of bills receivable of Fleming & Templeton. My recollection is

that the Corsicana National Bank did buy from Dunn & Talley some just how many I don't know of the notes they had bought from Fleming & Templeton; some of the select paper, possibly the paper of some of the depositors, but we had no dealing whatever, directly or indirectly, with Fleming and Templeton. Whatever trade we made with Dunn & Talley was independent, just like we bought from any other person, and had nothing to do with Fleming and Templeton; they were never mentioned in any manner, shape or form, and were under no obligations to buy this paper. In the discussions leading up to the loan, we were not asked to buy any of the bills receivable of Fleming & Templeton. I don't think the bank loaned Dunn & Talley the money to take over these bills receivable, but the records will show; there is no particular reason why we might not have done it. This paper you hand me purports to be a draft on the Western Bank & Trust Company signed by A. G. Elliott, assistant cashier of the Corsicana National Bank, in favor of Dunn & Talley for $32,003.50; also another one of same date, June 4th, in favor of Dunn & Talley, drawn on the Western Bank & Trust Company, of Dallas, signed A. G. Elliott, assistant cashier, for $101.50. I don't recollect whether we advanced that loan. I think we received the letter you hand me from the Treasury Department of June 2, 1908, and replied thereto on June 29, 1908. Mr. A. G. Elliott, assistant cashier, frequently signed my name as vice-president.

I am a stockholder in the Corsicana National Bank, but since my retirement as vice-president in May, 1909, I have not had any access to the books, records and property to the bank. I requested permission as a stockholder to examine the correspondence and records of the
45 bank in connection with this transaction, and that permission was denied me, and I have had no opportunity to refresh my recollection as to the various details of the transaction. During my incumbency as vice-president, no stockholder or director in the Corsicana National Bank ever made a complaint or demand upon me because of the Fleming transaction or the Templeton

transaction. In the meetings of the stockholders or directors no suggestion was ever made that the bank should bring suit against me or anybody else because of any supposed loss growing out of the Templeton transaction or the Fleming transaction. There were some losses growing out of other excessive loans, about which the Treasury Department at Washington wrote the bank, but no action was ever taken by the Department against the bank on account thereof, and this is the only suit ever brought against the bank or against the management of the bank for any losses sustained. The bank in its corporate capacity has never brought suit against any officer or director of the bank because of this loss. I have never known of any action in my banking experience, from observation or hearsay, by the Department at Washington on account of that character of loans. I have never heard of any suit by a stockholder or by the bank itself against any officer or director because of a loan growing out of such loans. From the time the loans were made down until the time that Mr. Thompson bought in, and after this loss was sustained, nobody connected with the bank ever made a demand or intimated or insinuated that there was a demand on the part of any stockholder, or the bank itself, against me for this loss. The first time I heard that a suit was actually brought was on my arrival in Dallas from New York in the month of February of last year. In the meantime, a period of nearly two years, no demand had ever been made on me by the bank about these loans; nor by any officer or stockholder of the bank. I think I signed the letters which are offered in evidence as Exhibits H, I, J, K, L, M, N and O. I think the two notes of date June 10, 1907, which are introduced and made Exhibits P and Q, as well as the two notes dated December 10, 1907, which are introduced as Exhibits R and S, are made out upon

46 the original lithographed customers notes of the Corsicana National Bank, and are the form of notes used by the Corsicana National Bank at that time, but I do not know in whose handwriting they are; they are not in my handwriting.

N. W. TOWNSEND testified as follows:

I have been secretary of the Fleming Ranch & Cattle Company since it has been taken out of the hands of a receiver, which was done pursuant to a contract between some of the creditors of the Fleming Ranch & Cattle Company. The assets of that corporation were sold. The horses, mules and a few hogs were sold in November, 1909, and the land was sold in May, 1910. The proceeds of these sales was distributed among the stockholders. The plaintiff bank received on its stock $1,900.00 in notes face value, with accrued interest, in the partition of the notes among the stockholders. These notes were received on February 17, 1911, and the sum of $7,784.64 in money was received by the plaintiff bank on February 17, 1911, and on June 28, 1911, the plaintiff bank received the further sum of $336.00, which was the last dividend, and there will be no further substantial payment. There is an insignificant remnant of land left, but it will not pay more than a nominal amount on the stock, if anything, as the company is substantially liquidated. The Corsicana National Bank held 282 shares out of the 5000 shares of stock of the corporation outstanding. Dr. Johnson was a member of the board of directors of the Fleming Ranch & Cattle Company. The other directors were: Royal A. Ferris, T. T. Holloway, J. E. Cockrell, Fred Fleming, L. C. McBride, and R. E. L. Knight. The board of directors, voting unanimously, sold to Mr. Fred Fleming the cattle, horses, hogs and things of that kind, aggregating $68,516.00. On May 23, 1910, the board unanimously authorized the execution of a contract for the sale of the land at $4.00 an acre. The sale was also authorized unanimously by all of the stockholders present at a stockholders' meeting. At the stockholders'
47 meeting, the minutes show J. A. Thompson, president of the Corsicana National Bank, representing 282 shares, was present. The Western Bank & Trust Company closed its doors January 15, 1908, and I think Mr. Fleming went into bankruptcy in June, 1908. After the doors of the Western Bank & Trust

Company were closed, both Fleming and Templeton were considered as being insolvent. Prior to that time they were both regarded as solvent. In November, 1907, Fred Fleming and D. A. Templeton executed a trust agreement to William Doran and Bennett Hill to secure unsecured depositors of the Western Bank & Trust Company, and this agreement was published in the Dallas News.

L. C. McBRIDE testified as follows:

I became receiver of the Western Bank & Trust Company of Dallas on January 21, 1908. At the time the bank failed in January, 1908, Fred Fleming was president of the institution and D. A. Templeton was vice-president. It is my understanding that before the receivership proceeding the Western Bank & Trust Company had, through its president and others, executed a voluntary deed of assignment to Henry D. Lindsley. In 1907, they had executed what we call a trust agreement. At the time of the failure of the bank, it was my opinion, from all investigations, that both Fred Fleming and D. A. Templeton were insolvent. As I recollect it now, Mr. Templeton was at that time primarily liable for something around $175,000.00, perhaps more than that; my recollection is that Mr. Fleming's entire indebtedness as shown in his bankruptcy proceedings, was very much more than that, perhaps about $300,000.00. The joint claim against Fleming and Templeton of the Western Bank and Trust Company was something around perhaps a little more than $175,000.00. Mr. Fleming subsequently went into bankruptcy and I think has been discharged. His estate paid out less than 50%. Mr. Templeton's estate also paid under fifty per cent. Mr. Templeton died something like a year ago. From the time of the failure of the bank, my investigations led me to the opinion that both Fleming and Templeton were insolvent.

48 The greater portion of Mr. Fleming's estate consisted of his shares of stock in the Fleming Ranch & Cattle Company, and a little while

later on the creditors of Mr. Fleming effected a purchase of these shares of stock from the trustee in bankruptcy and put that Fleming property in the hands of three trustees, T. S. Miller, Judge J. E. Cockrell and T. T. Holloway. Within a month or two after I was appointed receiver of the Western Bank & Trust Company, A. M. Milligan, of Corsicana and I were appointed joint receivers of the Fleming Ranch & Cattle Company. After I effected a sale of the ranch properties, which meant the value of that ranch stock, because the stock was valuable in proportion as the land was valued for $4.00 an acre, to Mr. Ward, and when the purchase price was received that was distributed among Mr. Fleming's creditors in proportion to their claims. All of the property had been reduced to money and distributed except a few long-time land notes that the ranch held; they were divided up among the creditors in proportion to their claims. Around thirty per cent was realized by the stockholders of the company. When the creditors agreed to buy the stock in the ranch company and take it out of the bankruptcy Court, the referee required $10,000 to be put up, but there was some refund on it. Each creditor contributed proportionately to his claim. I have had the custody of the books and papers of the Western Bank & Trust Company since I took charge. The tickets you hand me are the original debit and credit tickets. The original deposit slip for $29,100 was shown as a credit on the Fleming and Templeton account, on June 11, 1907. On that day, just prior to the entry of that credit, the account of Fleming and Templeton showed an overdraft of $125,-241.45. On December 22, 1907, the account of Fleming & Templeton with the Western Bank & Trust Company is charged with $900.00 with the statement, credit to Corsicana National Bank. The "F" on the charge slip Exhibit E. 1 in [is] in Fred Fleming's handwriting. The Western Bank & Trust Company books on December 24th show a credit of like account to the Corsicana National Bank.

The account of Fleming & Templeton on the books of the Western Bank & Trust Company on April

49 16, 1907, showed an overdraft of $93,282.95; on April 10th, overdrawn $56,000.00 and so on each day thereafter, giving the amount. On July 6th, there is a credit to the account of $142,000.00 by D. A. Templeton's stock account. That was an account on which Templeton was carrying his interest in the stock of the Western Bank & Trust Company. The effect was to reduce the overdraft on the Fleming & Templeton account and to swell the overdraft on his private stock account. The last entry to the account of Fleming & Templeton was on December 30, 1907. At the time the bank failed the account showed a credit of $750.63. On December 24, 1907, the date the $900.00 was charged, the account showed a credit of $1,869.00. D. A. Templeton or Fred Fleming, or both—I don't mean Fleming & Templeton as a firm—appeared to be indebted to the bank in an amount which has not been fully paid yet. On June 10, 1907, the account of Fleming & Templeton was overdrawn $125,241.45; that of D. A. Templeton was overdrawn $9,756.31; and Mr. Fleming carried a small credit all the time.

A. M. MILLIGAN testified as follows:

I was for a long time connected with the old bank at Dallas, but I don't know that I had any connection with the banking firm of Fleming & Templeton at Corsicana. I did business with Fleming & Templeton. My understanding was that Fleming & Templeton were engaged in the banking business here at Corsicana as well as the Western Bank & Trust Company. The first I knew of the sale of the banking business of Fleming & Templeton or the Western Bank & Trust Company at Corsicana to the Corsicana National Bank was when the Western Bank & Trust Company sent me a bank book of that bank, showing my account had been moved to Dallas, in place of the Fleming & Templeton book. My connection as a director of the Corsicana National Bank began in January, 1908. I sold out from the Western Bank & Trust

Company about July or August of 1907. After I became director of the Corsicana National Bank, objec-
50 tions came from the Comptroller of the Currency at Washington in writing concerning the Fleming and Templeton loan. The Western Bank & Trust Company failed about the middle of January, 1908, probably a little more than thirty days from the time Fleming went into bankruptcy. The bank disposed of the Fleming and Templeton loan to a little side corporation which it had, a land and loan company. At that time I was in the Panhandle; I had been appointed receiver of the Fleming Ranch & Cattle Company. When I purchased shares in the Corsicana National Bank, each share carried with is a share in the Land & Loan Company. That was also true when Thompson bought Johnson out and when I sold out. My recollection is that the same directors who managed the Bank's affairs managed the affairs of the Land & Loan Company, but I would not say positively, because I was not there a great deal. I knew Mr. C. W. Jester, president of the Corsicana National Bank, very well, and after I was appointed receiver he talked with me a great deal about the $30,000 loan to Fleming and Templeton. He said if he had been there the loan would never have been made. From my observation of the bank, I would say that there was friction between S. W. Johnson and the Jester interests. I was associated with the bank until Mr. Jester's death and Dr. Johnson selling out to Mr. Thompson, in May, 1909. It was my understanding that Dr. Johnson, with reference to the policy of the bank and its loans, would act upon his own initiative and judgment. Mr. C.W. Jester was president and Mr. S. W. Johnson was vice-president. I know that in controlling the affairs of the bank, S. W. Johnson dominated or preponderated. With reference to the $30,000 loan to Fleming and Templeton, S. W. Johnson told me that he thought it was a good business proposition; he got the business of Fleming & Templeton. I carried my business to the Corsicana National Bank from the Western Bank & Trust Company. I was present in the directors' room of the Cor-

sicana National Bank at the time that Johnson and Thompson reduced to writing their agreement with reference to Johnson selling his stock to Thompson, and I signed same, I think as a witness. Under that agree-
51 ment, S. W. Johnson fixed the price, and Thompson was to pay him the price named for his stock or Johnson would pay Thompson that price for Thompson's stock. Prior to that, there was some discussion with reference to a board of directors being elected in harmony with Thompson and Johnson, and I thought it was settled. I think Mr. Thompson agreed to settle on that basis. Johnson made an appointment to meet Thompson after that and settle the matter, but I was notified that Johnson would not be there, and did not go. Either Johnson or some of the boys around the bank notified me. It was after this appointment that was not kept that this sale of stock and contract was executed.

My deposit was transferred from the bank of Fleming & Templeton at Corsicana to the Western Bank & Trust Company at Dallas sometime in the spring of 1907. In place of turning my account over to the Corsicana National Bank, Mr. Fleming transferred it to Dallas, as he and I were good friends. I was staying in the west for him a good deal. I was a stockholder in a small way in the Western Bank & Trust Company at Dallas. In the summer of 1907, and prior thereto, Mr. C. W. Jester was away a good deal. While it is true that C. W. Jester and S. W. Johnson had equal authority, from what I gathered at the bank and heard talked about on the streets by everybody, I understood that Dr. Johnson took the lead on a lot of these loans; that he was the man at the head of the thing. Every time the Bank Examiner would come, he would raise a rough-house about the loans to Fleming & Templeton, and then at the directors' meetings they would be discussed. When I became a director I had no idea that the loans were illegal. Mr. Jester objected not to the illegality of the loans, but to the amount. I first bought ten shares from the Corsicana National Bank—some stock that the bank was carrying—and then I afterwards bought out the ten shares which Mr.

T. P. Kerr, a director, owned, I got originally ten shares of the Corsicana National Bank and ten shares from the Land and Loan Company. They were separately issued, but the Corsicana National Bank stock sold for so much money with the land company stock attached to it, but I know of no agreement to that effect. I was
52 made director of the Corsicana National Bank, but if I was ever director of the land and loan company, I never had anything to do with it, but it was my impression that the directors of the Corsicana National Bank handled the affairs of the loan company. I was connected with the bank at the time the transfer was made of the Fleming and Templeton notes to the Land & Loan Company, but I was out west and never heard any discussions until after I came back, when some of them told me they had fixed the Fleming matter in that way. I know nothing of its being transferred back to the bank. If that was done, it was done after I went out. Up to the time of these loans I had known Fred Fleming twenty-five years, I guess. I got acquainted with Mr. Templeton when he first came to Corsicana, about twelve or thirteen years ago. In June, 1907, when they were running the Western Bank & Trust Company in Dallas and this business here, Mr. Fleming was regarded as a very wealthy man, who could borrow $30,000 or $15,000 from nearly any banking institution. I never knew so much about Templeton's private affairs. I could not say much about it in December, because I had been in the west for Mr. Fleming, but he could have borrowed the money.

When I got back from the west, Mr. Fleming phoned me to come down on the first of December and pay the hands. He said he didn't have the money and I went to Dr. Johnson or Mr. Jester, and got the money and paid the hands on Fleming's ranch. The Western Bank & Trust Company was then considered hard-run for funds; that was the talk; I had confidence enough in Mr. Fleming to go and get my own money and use it for him.

Some of my particular friends and myself went on Fred Fleming's bond for $150,000.00, I think, for the county's money. That was in 1906, I believe.

Before the Corsicana National Bank took over the Fleming and Templeton business in Corsicana, Fleming & Templeton carried on business in their name and also the Western Bank & Trust Company in their name in the same building. On one side of the door I think it was painted "Fleming & Templeton, Bankers", and the other side of the door "Western Bank & Trust
53 Company." Deposits were made with Fleming & Templeton, according to my bank book. I would not be sure whether the Western Bank & Trust Company made the loans or not, but they probably did.

GEO. E. JESTER testified as follows:

C. W. Jester is my father and George T. Jester my uncle. In June, 1907, I think I had probably just been elected cashier of the Corsicana National Bank. Prior to that I had been assistant cashier. I had nothing to do with the loan of $30,000 to Fleming and Templeton in June, 1907. Dr. Johnson did not at that time ask my judgment as to the advisability of making the loan nor did he in December of the same year ask me to the propriety of renewing the same. When the loan was made, my father was out of town, and I know of no conversation between him and Dr. Johnson either then or in December, 1907, when the loan was renewed, in regard to the matter. I do not know whether Dr. S. W. Johnson ever obtained my father's approval either to the loan or the renewal.

Before making the loan, Dr. Johnson discussed the matter with me and with the assistant cashier, Mr. Elliott, on one occasion only, stating that he had agreed the day before to make this loan to Fleming and Templeton in two notes. I remember that I mentioned security, and Dr. Johnson said he thought it would be forthcoming. We also discussed the taking over of the business of the Fleming & Templeton Bank, in fact, wrote a general letter to some of the customers, and I considered the acquisition of that business as a good thing for the bank. At that time I considered Mr. Fleming worth $250,000.00 or more.

Mr. Fleming was generally regarded as worth $100,000.00 at that time, but I never regarded him as a man of wealth. While security would be better, I never objected to these loans, because I did not consider $15,000 each as exorbitant loans for men of their ability. At that time I had been in the banking business fifteen or sixteen years. The loans were regarded as legal and were regarded as two loans. I am now cashier of the First State Bank, which position I have held about two and a half years. In all, I have been in the banking business about 21
51 or 22 years. I have only been assistant cashier in former positions, but I am a director in the First State Bank now. I am familiar now, and was familiar at the time of the loans to Fleming and Templeton, with the provision of the national banking law which inhibits loans to one man in excess of ten per cent of the capital stock and surplus, but I think that statute would not prohibit a man from indorsing, beyond that limit. I think it was not the custom to loan more than ten per cent of the bank's funds to one man, but as far as secondary liability was concerned you could not say there was a custom because there were not enough transactions of that kind for it to become a custom. I have never known, except in this suit, of the right being questioned to loan a man more than ten per cent, if it was secondary liability. Loans in the Corsicana National Bank were made by the president and vice-president. If there was a loan committee, I didn't know it. I was still connected with the bank when these loans were renewed, but I heard no discussion in connection with it. At that time December, 1907, my father had returned from his summer trip and was in the bank. I was connected with the bank at the time of the organization of the land and loan company and at the time these Fleming and Templeton notes were sold to that company. The land and loan company was organized for the purpose of taking over some paper that the National Bank could not handle, and was also organized and used for the purpose of taking over bad paper and bad loans made by the bank. It was organized out of dividends paid by the bank. Some of the loans

sold by the bank to the loan company, and on which the loan company stood the loss, were the Schwartz loans, amounting to more than $20,000.00. There was also some Cotton Mill paper that was taken into the Land & Loan Company for the purpose of saving the bank a loss. They were separate institutions—one organized under the laws of the State and the other under the laws of the United States, and separate certificates of stock were issued. The management was practically the same for both companies, but I had the legal right to sell my stock in either institution without selling the other. I was not present when my father indorsed these
55 Fleming and Templeton notes as president of the bank to the land and loan company; I don't know when they were indorsed.

I know of no agreement to sell the loan stock and the bank together, but that was the custom; I don't know whether there were any sales made or not. The stockholders and directors of both companies were the same, but the officers were different, I think. When the Jesters sold their stock in the bank to Mr. Thompson, a like number of shares in the land and loan Company were thrown in, under the agreement, with the explanation that there was nothing to it. Before we went out, Mr. Milligan bought ten shares in the bank that the bank was carrying on its books, and a like number of shares in the land and loan company with them, and later he bought out T. P. Kerr, with a like number of shares in the loan company. I may be mistaken about the bank's unloading the Schwartz paper and the Cotton Mill paper on the loan company; the records would speak more accurately. I thought it was desirable for the Corsicana National Bank to take over the Fleming and Templeton banking business in Corsicana. It was a part of the understanding in making that trade that the Corsicana National Bank was to make this loan. My understanding was that there was to be a loan to Fleming and one to Templeton, Fleming going on Templeton's note and Templeton on Fleming's note. I got that from the note and from what Dr. Johnson told me. It was given to represent money

that had been given to Fleming & Templeton. At that time C. L. Jester was attorney for the Corsicana National Bank. The friction growing out of these conditions between the Jesters and Dr. Johnson induced us (the Jesters) to sell out. The matter of the loans was not mentioned to me until after they were agreed upon. In June, 1907, I had ten shares of stock in the Corsicana National Bank, Judge Lee Jester about the same, the Governor a small amount, and my father quite a block of it, all our interests aggregating about one-fourth. My father and I were closely associated in a business way, and while he was gone I represented him in a way. I was cashier of the bank at that time, and if there had been any idea on my part that these loans were either
56 improper or illegal or not judicious, I had the right by virtue of my position and interest to say so, and I would have done so. Dr. Johnson told me he had agreed to make the loans before they had been closed, and it was not too late for me to protest if I had thought there was anything wrong. He further told me that Fleming & Templeton had dissolved and gone out of business in Corsicana, and that he had made a trade with Mr. Fleming and Mr. Templeton by which our bank was to take over their deposits and make these individual loans, of $15,000 each. I understood not only from Dr. Johnson but from other sources as well that they had dissolved. One of the inducements, as Dr. Johnson told me, for making the loans was to get that business for our bank, and was regarded by him, by myself, and generally, as a good trade all around. None of the Jesters brought any suit against Dr. Johnson for making a bad loan on account of the loss which subsequently occurred. When we sold the Jester stock to Mr. Thompson about $50,000 worth, we told him that the land and loan company stock was no good, on account of the loss from the Fleming and Templeton loans, but we told him that Dr. Johnson had been conferring with Mr. Fleming and had hopes to save something out of it; but we sold it with the distinct understanding that the land and loan company was absolutely worthless. The Templeton and Fleming

loans must have been transferred back to the bank after I sold out, for I know nothing about it.

After the Corsicana National Bank took over the business of Fleming & Templeton, the latter firm went out of business at Corsicana. So far as my knowledge was concerned, I would not undertake to say more than that. My father objected to the loan on the ground of the lack of security.

At the time of the loans, in June, 1907, my understanding was that Fleming & Templeton were closing up all of their branches and that this was probably the last one of them. That was the general opinion. Contemporaneously with that loan they did close out their business in Corsicana and transacted no further business there under the name of Fleming & Templeton.

57 At the times of the renewal, in December, 1907, I never heard my father express himself one way or the other, and I have never heard him object to it on account of its illegality or excess over the national banking law allowance. The only objection I ever heard him make was that he thought there ought to be some security.

J. M. BARTLETT testified as follows:

I was on the Board of Directors of the Corsicana National Bank in 1907 and 1908. I do not think I was at home in June, 1907, when the loan was made to Fleming and Templeton, and was neither consulted then nor at the time of its renewal in December, 1907, concerning the same. I knew of it after the loans were made, but I don't think that I approved making them. A bank is not entitled to carry paper that is overdue as live assets, and they have to be charged off and when these notes became overdue and unpaid they were put into the loan company. I may be mistaken about these renewals being overdue. I did not live in Corsicana at the time these loans were made; I lived at Rice. I do not remember having any personal knowledge of these transactions—

the making of the loans and the renewal. I was at a meeting of the board of directors when these loans, together with others, were brought up, but I don't remember whether anybody raised any question about the renewal of these loans. I went out of the bank in January following the time the Jesters sold out. I do not remember whether I was on the board when the Land and Loan Company re-transferred these notes back to the Bank. I do not think the board of directors either approved or disapproved the loan to Fleming and Templeton. I thought it was a bad loan, but I don't remember making or hearing any protest about it.

C. L. JESTER, testified as follows:

I was a member of the board of directors of the Corsicana National Bank on June 10, 1907, at the time a loan was made to Fleming and Templeton, but I was not consulted by Dr. Johnson in reference to it. When the loan was removed on December 10, 1907, I think I talked to Dr. Johnson. I did not concur in its renewal.
58 The matter was mentioned in my presence at Elliot's desk in the bank, and I took the position that the notes ought not to be renewed on account of the attorney fee question, that they ought to carry them as past due, in order to let them draw attorney's fees. I could not say exactly whether I was aware at that time that Fleming and Templeton had given a deed of trust to secure the depositors of the Western Bank & Trust Company. Of course, if it was published in the press I knew it. I was attorney of the board and the bank at that time, but the bank did not have much business. I don't think my professional services were employed with reference to the organization of a land and loan company.

I was County Judge of that county at that time, and for that reason I was not much in and around the bank, I stayed at the Court-house and lived out on W. Third Avenue. I was not consulted in any way about the making of any loans, and was not on the loan committee.

When the loan was renewed in December, I took the position that it would be better to carry those pieces of paper as past due in order that they might draw attorney's fees if any proceedings should follow against Fleming and Templeton. It was a matter of $3,000.00, ten per cent you know, and lawyer-like I wanted that. I had in mind at that time the possibility of Fleming and Templeton failing. I had no information, other than from the newspapers, about the financial condition of Fleming and Templeton. I was present at a meeting of the board of directors when this loan was discussed. Mr. Bartlett made the remark, "Well, the thing has been done and there is no use talking about it any further," or something to that effect. There was no action taken on it. There may have been other things done at other meetings that I did not attend, but at that meeting really what was done was that the loan was not approved. My indefinite recollection is that we appointed a finance committee at different times which was to report to the board. I think Mr. Kerr was on it, possibly George T. Jester, and possibly J. M. Bartlett. The loan had been made before
59 I knew anything about the matter, but I had an idea that Fleming & Templeton were leaving Corsicana. I do not think the board of directors regarded that as an excessive loan. While I never investigated it as a lawyer, I was under the impression that it was not an excessive loan. The Land & Loan Company was organized, during my connection with the bank which had been for the last six or eight years, out of a special dividend from the undivided profits of the bank, for doing the business which the bank could not do. Undoubtedly in some instances the bank sold the loan company some undesirable paper. The general impression was that the bank transferred the Fleming and Templeton loans to the Land & Loan Company, and the Land & Loan Company in turn gave the bank dollar for dollar. At the time Mr. Thompson bought the Jester interests, I told him all that I knew. He knew of the Fleming and Templeton loans and that they had been sold to the loan company. I told him that the loan company stock

might be worth a good deal and might be worth little; that each stockholder in the bank had the same number of shares in the land and loan company that he had in the bank. I went over the details as to the worth of the stock carefully with Mr. Thompson and told him that the Corsicana National Bank had a profit and loss account which did not show in its assets, of something like $75,000.00. I told him that it was problematical as to how much of that $75,000.00 was collectible, and then I told him what the surplus and profits of the bank were worth. Since I had been frank with Mr. Thompson, I did not assume that he would sue the Jester interests, or anybody else, but he did not have any agreement with us not to sue us. There was no discussion at that time about his suing Dr. Johnson, and he never has indicated to me why he did not sue the Jesters. The Jesters never thought of suing Dr. Johnson; I know that no member ever connected with that bank ever doubted Dr. Johnson's loyalty to the bank, and certainly it never occurred to me or to any of us to institute suit against him for making this loan or any other loans. The loan company and the bank were operated under different charters with independent stock issues. The loan Company was organized for $50,000.00. It was planned out to let each
60 man own the same amount of shares in the loan company and the bank. I know of no agreement ever had in reference to selling loan company stock without selling the bank stock; I know of no impediment against it. It was just an idea that a man with stock in the bank held it in the other and that they were together. This trade was consummated in April, 1909, and I know it was subsequent to that time that I first learned that Mr. Thompson and his associates under the new management were contemplating this lawsuit against Dr. Johnson; just when I could not say. I got the impression from some source that this lawsuit was born of an unpleasantness between Dr. Johnson and Mr. Thompson growing out of Dr. Johnson's remaining on the board of directors of the Fleming Ranch & Cattle Company. Mr. Thompson said he brought the suit but he never

told me his object. Since this suit was instituted, I have not talked with either Mr. Richard Mays or Mr. Heflin. Mr. Thompson bought 262 shares in the Corsicana National Bank, which was a little over a fourth of the whole number. He bought the interests of Mr. Bartlett and the Jesters. If the Corsicana National Bank succeeds in this suit, Mr. Thompson would pull off a very profitable transaction and would participate in the recovery. Of course, it would be a matter of mathematics.

Before this loan was renewed and up to the time it was transferred to the land and loan company on February 12, 1908, we answered several letters from the Department relative to loans, and I don't doubt that these two loans were mentioned. As to the reason the Jesters disassociated from the Corsicana National Bank, my father was getting to be about sixty-eight years old, and his express desire was instead of getting into more active business to get into quieter business, and he was desirous of disassociating himself with a live wire in the banking business, which we call the Corsicana National Bank, and having that in view he did what was done. He was an exceedingly conservative man, and these big things scared him; he didn't want to be worried with them. I heard him mention the Fleming loan frequently. He did not approve of it. My impression was that the transfer of these two Fleming and Templeton loans
61 from the bank to the loan company was after the Western Bank & Trust Company had gone into the hands of a receiver and Fred Fleming had gone into bankruptcy. I do not think it could be gainsaid by any member of the board of directors that it was agreeable to all that that transfer should be made. I was the only lawyer member of our family with whom my father ever conferred, and in that way I kept in touch with anything of importance that took place at the bank, more or less. When this loan was made to Fleming and Templeton and the Corsicana National Bank took over Fleming and Templeton's business in Corsicana, I thought they had quit business in Corsicana, and gone into business in Dallas.

At the time of the loans to Fleming and Templeton, the Corsicana National Bank was a successful institution, during the past twenty-two years the stock has enhanced in value, and Dr. Johnson was entitled to a part of the credit of building up that institution. During all of my connection with the bank, we got letters from the Department about these matters, and I have never been connected with a bank that did not get them. The transfer of the loan by the bank to the loan company was for the purpose of avoiding any loss to the bank, and as the two institutions belonged to the same stockholders, I did not think we were doing violence to law, morals, or conscience. The bank and the Land & Loan Company were separate legal entities, but I justify the transfer on the ground of common ownership.

GEORGE T. JESTER testified as follows:

C. W. Jester was my brother and the younger Jesters are my nephews. I was on the Board of Directors of the Corsicana National Bank during the years 1907 and 1908. Prior to the time the two notes of $15,000.00 each were made to the bank by Fleming and Templeton, I was passing through the bank and in the back part of the bank Dr. Johnson and Mr. Elliott were discussing this question and I stopped and we discussed the matter.

62 The conversation was in regard to purchasing the effects of a little bank that belonged to Fleming & Templeton, or Dunn & Tally, I do not remember which. They were speaking of buying the notes of that bank and were to receive the deposits and also in connection with that, my understanding was, that it was necessary to make a loan to Fleming & Templeton, I think they probably wanted to borrow $15,000.00 each; I remember that I stated that the most important question was the question of security. It was suggested that the bank had plenty of money and that they had a good business. I remember I stated that I doubted whether the Corsicana National Bank could hold all of

these deposits of Fleming & Templeton, but after all it would be a question of security. The conversation was casual; I was just passing through the bank. At that time I had nothing to do with the active management of the bank, having sold nearly all my shares five or six years before. I only held fifteen shares then. I had nothing to do with making the loans. In talking with S. W. Johnson, vice-president, I neither approved nor disapproved the loan, but I remarked that after all it was a question of security, and the Doctor remarked that he didn't hardly think the bank would get the loan anyway, that he thought that the City National Bank would be amply secured. $30,000.00 to two individuals is not an ordinary loan in Corsicana bank circles, but we can let a man have up to our limit. Dr. Johnson conferred with me about this loan, but did not ask me whether I thought it would be a safe and good loan. I did not approve that loan as it was made to Fleming & Templeton I heard that the loan was renewed on December 10, 1907, but I was not advised with or consulted by Dr. Johnson, and I was not present. On the day of the conversation in the bank with Johnson and Elliott, I understood Fleming and Templeton were in Corsicana, but I never saw either of them. I never spoke to anyone concerning the matter except on that occasion, and know nothing about it.

I had a desk upstairs in the bank at the time of the conversation just mentioned, and I might have been going up to my desk. For ten or fifteen minutes we discussed the propriety of making this loan. George E. Jester, the cashier, was not present at all. I did not object to the loan on account of the amount.

63 I had known Fred Fleming for a long time and had loaned him myself as high as $10,000.00, possibly higher than that. At that time Mr. Fleming was reputed to be a wealthy man, and Mr. Templeton was considered well-to-do but not so much so as Fleming. From general notoriety, I think I should have regarded each of them as entitled to a loan of that amount, $15,000; they had been borrowing like that from other people. In the conversation above mentioned, I informed Dr. John-

son that Fleming & Templeton were going out of business in Corsicana. Part of the consideration for making the loan was that the bank would get the deposits of Fleming & Templeton, and they did prove valuable. I do not remember whether there was a finance committee to pass on the loans at that time or not. During the various meetings of the board of directors thereafter, these loans were brought up like other loans and discussed, and I think there was some criticism, but by whom I could not say. When my brother and I and the Jester family sold their interest to Mr. Thompson, I believe these loans had been sold to the Land & Loan Company. The purpose of the loan company was to handle some paper that would not pass muster in a national bank. We thought it was for the best interest of the bank and the stockholders that that company should be created and that it should be used for the purposes for which it was used. The transfer of the Fleming and Templeton notes to the loan company was done with my knowledge, all of the board acting together. My brother was president of the Corsicana National Bank at that time and officially indorsed this paper. I did not think in making the transfer there was anything unjust; we thought we were doing the thing for the best interests of the stockholders of the bank. Judge Jester negotiated the trade of the stock with Mr. Thompson. I do not know why Mr. Thompson did not sue me or Judge Lee Jester for this loss. No one ever talked with me about bringing this suit.

George E. Jester, Lee Jester, and I each received a letter from Mr. Richard Mays, concerning the making of these loans, and I replied to the one I received on November 4, 1909. I think the others replied similarly to myself.

64 At the time the Jesters sold out to Thompson there was not perfect harmony between the Johnson interest and the Jester interest in the Corsicana National Bank.

The reason the Jesters sold out was that my brother wanted to retire from the banking business, and really it was my desire to retire, and our idea was to get out of the Corsicana National Bank and start a little $50,000.00

bank and turn it over to our boys to run. My judgment is that Dr. Johnson's relations were at all times loyal to the bank. I have been in the banking business thirty-one years, am familiar with the national banking law prohibiting loaning more than ten per cent of the surplus, and think there was no violation in loaning $15,000.00 each to Templeton and Fleming without surety, but am unadvised as to whether it would have been illegal for each to sign the other's paper. I think, however, that banks frequently take paper of that kind. It is the custom of banks to allow you to sign as surety for more than ten per cent. I cannot recall any particular letter from the Department at Washington complaining of excessive loans, but we always received in the bank letters from the Department.

LOUIS C. WELLS testified as follows:

I was connected with the Corsicana National Bank between I think June 1, 1909, and September 1, 1910. The capital stock of the bank during 1907 was $100,000.00, the surplus $100,000.00, so that the capital stock and surplus was $200,000.00. Some time after May, 1909, the surplus increased $20,000.00. I was cashier of the Corsicana National Bank at the time the Fleming and Templeton notes were re-conveyed to the Land & Loan Company. I was also sercetary of the board of directors of the Corsicana National Bank but had no official connection with the Corsicana Land & Loan Company. I knew nothing whatever personally of a transaction between the bank and the Land & Loan Company with reference to the two Fleming and Templeton notes.

D. N. RICE testified as follows:

In 1907, I was bookkeeper for the Corsicana National Bank. Since that time it has moved its bank-
65 ing place of business. I saw Fleming and Templeton in Corsicana in the summer of 1907,

along about the time the loan was made to them. They were in the Corsicana National Bank conferring with Dr. Johnson. That was along late in the afternoon, after banking hours. After Fleming and Templeton left the bank they went hurriedly towards the depot, evidently trying to catch the 5:25 or 5:30 train for Dallas. I did not hear the whole conversation, but my impression was that a loan was made. Afterwards I knew that the loan was made. After that time the business of the banking firm of Fleming & Templeton was transferred to the Corsicana National Bank.

Dr. Johnson never afterwards mentioned the fact that he had made this loan to either of them.

ERNEST JOHNSON testified as follows:

The paper you hand me is a draft by the Corsicana National Bank signed by Assistant Cashier Elliott, on the Western Bank & Trust Company, on the back of which is an indorsement of Fleming & Templeton to any bank or banker. I am no relation to S. W. Johnson, the defendant in this case. I have been with the Corsicana National Bank I think five years, and my present connection is as assistant cashier. I started with the bank as teller. I have here the draft register, which shows on June 20, 1907, "draft drawn on the Western Bank & Trust Company in favor of Fleming & Templeton for $29,100.00. A. G. Elliott kept that book, but my daily balances depended on its accuracy, and it was correctly kept. At that time the Corsicana National Bank kept an account with the Western Bank & Trust Company, but I could not say what the balance was. The draft is number 7830, and shows "purchased by loan." The $29,100.00 represented a loan. The general ledger, which I have here, shows an entry under date of December 20, 1907, on the Western Bank & Trust Company account, "Western Bank & Trust Company, Dallas, Texas, December 20th, account of D. A. Templeton and Fred Fleming, $900.00." That represents a charge to Western Bank

& Trust Company of $900.00. The book I have here is one which I kept and shows $900.00 on December
66 20, 1907, credited to interest. That offsets this charge of the same date. We charged Western Bank & Trust Company and credited interest $900.00. The draft for $29,100.00, which was paid by the corresponding notes, represented a loan of $30,000.00, with interest deducted for six months at six per cent, $900.00. The notes were those of Fleming and Templeton for $15,000.00 each, dated June 10, 1907. There was a second payment of interest on December 20, 1907, for an extension of the two notes for six months.

The teller's cash book on June 10, 1907, shows two notes made on that date by Fred Fleming and Templeton for $15,000.00 each. It shows under credit interest $900.00 paid by Fleming & Templeton.

The records show the Fleming and Templeton notes were transferred to the Land & Loan Company on February 12, 1908. The bills receivable account here on the books of the Corsicana National Land Loan Company shows they took on these notes February 12, 1908. The Corsicana National Land Loan Company carried its account in the Corsicana National Bank, and a check to cover that account was given by it on the Corsicana National Bank, payable to the Corsicana National Bank. I have here the minute book of the Corsicana National Bank, and the minutes of the Directors' meeting of February 11, 1908, show nothing with reference to the Fleming and Templeton notes; neither do the minutes of the next meeting, March 10, 1908. The first individual stockholders' meeting in 1910 was January 11th. The directors elected at that meeting were C. W. Jester, George T. Jester, C. L. Jester, J. M. Bartlett, T. P. Kerr, E. W. Johnson, A. M. Milligan, C. R. Terry, S. W. Johnson. They were the directors of the Corsicana National Bank on February 12, 1908. The directors elected at the annual meeting in 1907, were C. W. Jester, George T. Jester, C. L. Jester, J. M. Bartlett, T. P. Kerr, W. A. Polk, Jr., Travis Holland, S. W. Johnson, E. W. Johnson. On June 10, 1907, the board was the same, with the exception

that W. A. Polk, Jr., was not there. On December 10, 1907, the book shows the board consisted of E. W. Johnson, George T. Jester, J. M. Bartlett, C. W. Jester, S. W. Johnson, and C. L. Jester making a total of six, so that there is no record of any change in the board.

67 At that time W. A. Polk was son-in-law of S. W. Johnson, the vice-president of the bank. The directors of the Land Loan Company on May 14, 1907, the date of the organization, were C. W. Jester, S. W. Johnson, E. W. Johnson, J. M. Bartlett, C. L. Jester, George T. Jester, T. P. Kerr, W. A. Polk, Jr., and Travis Holland. The next meeting of the board of directors of the Land Loan Company was held February 11, 1908. That was not a selection of board of directors. From the date of its organization, in May, 1907, there was no election of new directors until January 11, 1910. It is my understanding that all the Corsicana National Bank directors were the same directors of the National Land Loan Company. The minutes of the meeting of February 11, 1908, show no record of the stockholders' authorizing the board of directors of the Land Loan Company to buy the Fleming and Templeton notes from the Corsicana National Bank?

I was present in person at the meetings of the stockholders of the Corsicana National Bank and the board of directors of the Corsicana National Bank when these resolutions of January 11, 13 and 14, 1910, were passed: I acted as secretary of the stockholders' meetings, but not of the directors' meetings. As well as I remember, Mr. Mays was present at those meetings but I could not say that he was present in any other capacity than as a member of the board. I have no recollection of any discussion of the Fleming and Templeton matter at any of those particular meetings. The resolutions were handed to me, as secretary, a day or two after the meeting of January 11, 1910, by some of the officers of the bank, I think, and I drafted the outlines for the minutes and such as that. At the time of these meetings I was assistant cashier of the bank. It was understood, I guess, that these resolutions were for the purpose of getting

ready to bring this suit against S. W. Johnson, but I personally had no knowledge of it and heard no discussion concerning it at those meetings, although immediately prior to and after the meetings at various times I heard it discussed a great deal. My recollection is that Mr. Thompson took charge of the bank in May, 1909.

68 I know O. M. Peters, C. C. Walton, Clarence Urban, W. M. Huggins, and J. M. Harper, directors of the Land Loan Company. Neither of them has ever owned any stock in the Corsicana National Bank since my connection with that concern. Each of them owns stock in the Land Loan Company, but I do not know how much.

E. W. JOHNSON testified as follows:

I was a director in the Corsicana National Bank in 1907 and I might have been in 1908. Dr. S. W. Johnson did not consult with me with reference to making a loan to Fleming and Templeton in June, 1907, or in reference to its renewal in December, 1907.

I do not know whether the loan was made to Fleming & Templeton or to the individuals Fred Fleming and D. A. Templeton. I know the loan was $30,000.00. I wasn't taking any part in the active management of the bank either in June or December, 1907. I have been out of the bank two or three years; I think I went out before the Jesters did.

I have no knowledge that the loan of $30,000.00 was ever before the board of directors of the bank or that they voted its approval.

DR. W. H. DUNN, testified as follows:

I worked for the firm of Fleming & Templeton in Corsicana before it sold out to the Corsicana National Bank. Before that sale, Fleming and Templeton were in Corsicana a time or two and I know that they were at the

City National Bank, but I do not know whether they tried to sell out to that bank or not. The Western Bank & Trust Company did business in the same house that Fleming & Templeton did; took notes in the name of the Western Bank & Trust Company, most of them. Fleming & Templeton took the deposits. We made a class of loans to farmers that were not taken in the name of the Western Bank & Trust Company. These farmers' loans were made to the Texas Cotton Commission Company. My recollection is that there were loans made by Fleming & Templeton the last year or two. What loans were made were made by the Western Bank
& Trust Company or the Texas Cotton
69 Commission Company. A sign Western Bank
& Trust Company was on one side, and I believe Fleming & Templeton, Bankers, had been on one side, but I do not know whether it was there when we went into liquidation or not. In that deal, Mr. Talley and myself sold some bills receivable to the Corsicana National Bank. Dunn & Tally bought all the bills receivable from Fleming & Templeton. My recollection is that at the time we made that trade we dealt with Dr. Johnson; Mr. Jester was somewhere esle. We finally traded, and I think Dr. Johnson was the man that I had my talk with. I think they paid us exchange for some notes Tally and myself sold them—an exchange for $32,350.00 and another for $101.50. I think this was about thirty days after the sale of Fleming & Templeton to the Corsicana National Bank, which I think was the latter part of May, 1907.

Both the Western Bank & Trust Company and Fleming & Templeton went out of business in Corsicana at the same time, in May, 1907. It was my understanding that the co-partnership of Fleming & Templeton was dissolved in Corsicana in May, 1907, and that they held themselves out to the public in Corsicana as being dissolved. The firm of Dunn & Tally wrote letters to the public that they had dissolved and gone out of business. We bought the notes sometime in May, 1907, and wrote these letters to the people who own the notes. Some two of three weeks—may be a month—after, I sold the notes

to Dr. Johnson. We indorsed part of them Dunn & Tally. Fleming & Templeton did not sell any of those notes to the Corsicana National Bank. We (Dunn & Tally) bought all of them from Fleming & Templeton, and the Corsicana National Bank selected the ones they wished to buy and bought them. All of the notes they bought were paid. My best recollection is that Mr. Tally got Mr. Nichols or somebody to take the signs off the building right away after the dissolution, but I could not say whether we got them down in May or not. It is my understanding that Fleming & Templeton disposed of their business in Corsicana along in June. I don't think Fleming & Templeton loaned money to their own depositors. At that time I considered Mr. Fleming worth two or three hundred thousand dollars. I
70 thought Mr. Templeton at that time was worth $100,000.00. His moral standing was considered to be good. I considered either of them as a man entitled to a loan of $15,000.00. In my judgment, the business that they had, the depositors, was a valuable acquisition to a bank in Corsicana.

My recollection is that the deposits of Fleming & Templeton at the time the Corsicana National Bank took over that business were something like $50,000.00 or $60,000.00, including the savings accounts. I think the Western Bank & Trust Company took some savings deposits to Dallas with them, which were not turned over to the Corsicana National Bank. I couldn't tell you even approximately how much they aggregated. So far as I knew, the dissolution of the partnership applied not only in Corsicana but everywhere, but I do not know whether they were interested together in other transactions. The letter which you hand me was prepared by Fleming & Templeton and given to us and sent out. We (Dunn & Tally) sent out some other letters, but they were based on this one.

Both Templeton and Fleming told me in May, 1907, that they had dissolved their business, and I understood they had dissolved everywhere, although they did not say so. There was no limitation that I know of. We

took over the bills receivable before that letter was sent out, I would say a week or two before.

The list you hand me is the list of the stuff we sold to the Corsicana National Bank. Among that list are many whom we regarded as the best citizens of Navarro County, and because of their standing their paper would be a desirable acquisition to the bank. We made a profit in buying and selling these notes.

C. R. TERRY testified as follows:

I think I became a director of the Corsicana National Bank in January, 1908. I was never consulted or advised with by S. W. Johnson with reference to the Fleming and Templeton loan. I also was a director of the Land & Loan Company, as the directors of that institu-
71 tion and the bank were common.

I was a director in the Corsicana National Bank from January, 1908, to the time Mr. Thompson took charge which was in 1909. I owned 37 shares in the bank, I believe. They had what they called a loan committee, or finance committee, that passed on these loans. I do not think I was on that committee.

Travis Holland is my stepbrother. At that time he was president of the bank at Kerns. I do not think he had any more to do with the active management of the bank in Corsicana than any other director. I was not a member of the board of directors when he was; in fact, I took his place on the board, and hence know nothing of any objections or protests he may have made to this loan to Fleming and Templeton at any directors' meeting in 1907 or any other time.

W. M. HUGGINS testified as follows:

I was a director and president of the Corsicana Land & Loan Company in January, 1910. Under the direction and authority of the stockholders and board of directors

of the Land & Loan Company I and others negotiated a demand and settlement on the Corsicana National Bank for the return of some money that had been paid the bank for two Fleming and Templeton notes, but I do not remember the details. The loan company had Fleming and Templeton's notes for something like $30,000.00, as I remember, and we traded them back to the bank, but what we got in return I do not remember. The Land Company bought the Corsicana Cotton Mill, I believe, and took that in part payment for the indebtedness.

In 1910 when I became president of the Land & Loan Company, I owned no stock in the Corsicana National Bank. I still own one share in the Corsicana Land & Loan Company, I think. When we took over the mill, there was a committee appointed to negotiate the deal. I was not advised that we were to transfer those notes back to the Corsicana National Bank so that they could sue S. W. Johnson for that money. Mr. Thompson had a conversation with me, which as I remember, was this:

72 That he wanted me to become a stockholder in the Corsicana Land & Loan Company, that the Corsicana Land & Loan Company directors and the Corsicana National Bank directors were the same, and he wanted to get it separate. Complying with his request, I acquired one share of stock, and became a director in the Land & Loan Company. Mr. Thompson further told me that he wanted the Land & Loan Company to make a demand upon the Corsicana National Bank to rescind the Fleming and Templeton trade. He said he wanted to get that paper out of the Land & Loan Company and put it into the bank, and to do that he wanted the directors in the Land & Loan Company different from what they were in the bank. No one else talked with me except Mr. Thompson. I heard of the institution of this suit against Dr. Johnson only after it was instituted. Mr. Thompson gave me the share of stock I owned. I never paid him anything for it. I think Mr. Urban and I had a conversation about it, and he said that he had one share of stock in the Loan Company. I don't know how we

arrived at the value of $65,000.00 on the mill, in the trade for it. At the time of the trade, there was some money changed hands, but just how I could not say. I know that we owed them a note. The note has been renewed a time or two, and there are some credits on it, but just how much I could not say. The note was originally for $35,000.00, I think.

G. J. HEFLIN testified as follows:

I was a director and vice-president of the Corsicana National Bank in 1909, and 1910 and have been since then. With reference to the trade between the Corsicana National Bank and the Land & Loan Company regarding the Fleming and Templeton, $30,000.00 loan, the loan company presented to the bank officers a resolution that they had passed setting forth the statement that they had been wronged and defrauded out of $30,000.00, and asked the bank to refund the money and make the settlement. After that was considered, the bank finally made them a proposition that if they would take a certain property that they had, consisting of the physical property and stocks and bonds of the Corsicana Cotton Mills, at a certain price, they would make the settlement, recognizing their claim and reimburse them for this paper, and that trade was finally made. The bank officers knew that they had some little interest in the land and cattle company of Fleming but they considered the $30,000.00 notes of little value. We considered, upon presentation of this demand on the bank by the loan company, that the loan company had a just and bona fide claim for the return of their money and the return by it of these notes to the bank. It was presented to Mr. Thompson, president of the bank, and he discussed it very freely with myself. We both discussed the matter at length with our attorneys, and we were advised that we had a just claim for the amount. I understand the right that help in the Fleming Ranch & Cattle Company as security to this Fleming and Templeton in-

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debtedness has been disposed of finally. All the money that was received by the bank on this claim as a result of reducing these collaterals to money was received from the trustee of the Western Bank & Trust Company and from the trustee of Fleming. Pending the bankruptcy of Fleming his creditors, among which was the Loan Company, formed a pool and money was advanced for that purpose. The bank's proportionate interest in the cattle company was approximately ten per cent. The amount assessed against the Corsicana National Bank was ten thousand dollars and some cents. $129.00 of that amount was returned to the bank after the whole matter was wound up. These suits were pending in the Courts, and the notes were in the hands of the Court. I do not think the amounts were credited by the bank on the notes. The amount that has been paid and the final amount to be paid will be applied. The approximate amount received at this time, less the expense, is $8,000.00. I do not think anything was ever recovered from Fleming's personal estate. My understanding was that the Fleming Ranch & Cattle Company were in bankruptcy in the Federal Court and the creditors met and decided that they would administer it themselves, and by some arrangement took it out of the bankruptcy Court, and incident to that transaction they had to raise a certain fund, and the Corsicana National Bank was assessed $10,088.00. I knew
74 the Fleming Ranch & Cattle Company was in the hands of a receiver, and I supposed a federal receiver.

Mr. Thompson purchased some stock in the Corsicana National Bank before I was interested, but I became interested very soon thereafter.

I know Mr. W. M. Huggins, Mr. C. C. Waldon, Mr. Clarence Urban, Mr. O. N. Peters and Mr. J. M. Harper. At the time they were elected directors of the Land & Loan Company, they did not own any interest of any kind in the Corsicana National Bank. The Corsicana Cotton Mills was sold on a basis of $65,000.00, and taking into consideration the physical properties, I considered the Cotton Mills as very cheap at that price. I am now pres-

ident of the Corsicana Cotton Mills. It is now in operation and has been for some time past. My understanding was that the property cost between $135,000.00, and $150,000.00. I arrived at the conclusion of its value by talking to people who have been associated with the mill since its building. The corporation was capitalized for $100,000.00. When I bought into the Corsicana National Bank, it was to my interest to know what the mill plant was considered worth by people who knew it. Since that time, as president of the mill, I have never had occasion to look at the construction and to see what it would cost to purchase it. When I bought into the bank, I conferred with Dr. S. W. Johnson about that mill, and he told me the bank was carrying the mill at $65,000.00, and he said he thought it was worth $100,000.00. That was prior to the sale of the mill to the land and loan company and prior to the sale to the land and loan company.

I bought into the Corsicana National Bank sometime around the 15th and 30th of May, 1909, and Mr. Thompson bought some stock prior to that. He was elected president and I vice-president. I do not know when he first discussed bringing the suit against Dr. Johnson, but we considered the matter quite a long time before we finally decided to bring the suit. We investigated it thoroughly. I think the suit was brought about the time those resolutions were passed. They were passed by the board of directors of the two corporations. We did this as directors of the Corsicana National Bank. We saw to it
75 that a majority of the directors of the land company were not connected with the bank. Mr. Mays gave these directors one share of stock each. In obedience to Mr. May's instructions, I issued that stock. They paid no money for it. Mr. Thompson, Mr. Mays and myself were active officers of the bank, and all three of us were officers also of the other corporation. We three brought about a re-organization of the land company of which we were a part, and that directory as a whole brought about a demand for a recission of that trade between the land and loan company and the Corsicana National Bank for the Fleming and Templeton paper. You might say

that Mr. Mays, Mr. Thompson and I were the moving spirits in the loan company who brought about the proposition that was made to the bank to cancel this trade and take back the paper of Fleming and Templeton. The result of the whole thing was that the bank got the paper back in its hands, so that it could sue Dr. S. W. Johnson. It was recognized by all of us that in our judgment it was a good transaction and that the Corporation for which we were responsible, if it was in a position to protect itself, would have a right to demand of the bank a restitution. We considered it an excessive loan, and that it was a transaction that should have never taken place—a void transaction. I don't think we ever discussed with counsel as to whether the Land & Loan Company had a suit and could recover against Johnson, but we acted on the advice of counsel in getting the paper back into the hands of the Corsicana National Bank, so that under the National Banking law we would have a suit against Dr. S. W. Johnson. Some of the resolutions were prepared by counsel and others by other members of the board. Our counsel usually attended to our resolutions. He was at the meeting and discussed the resolutions with reference to the Templeton and Fleming matter. I do not remember any conversation with Mr. Carter Kirvin. I knew that we got the stock of the Fleming ranch, and I discovered afterward that we got some of it through the trustee. I first thought that Mr. Fleming had turned this stock over to Mr. Johnson. I do not know that I have any knowledge of a claim proved up by the Land & Loan Company. Mr. Thompson had conferences with the trustee of Fleming's estate, and with the receiver of the Flem-

ing Ranch & Cattle Company in reference to

76 that claim, but I never heard him say whether as a representative of the Land & Loan Company or the Corsicana National Bank. I suppose he considered that he was representing them both. He was an active officer of both corporations. I think these conferences with the trustee occurred before this stock was taken back by the Corsicana National Bank. We came to the conclusion to bring the suit, and then had the land and loan

company transfer this stuff back to us. Our attorney, Mr. Mays, told us that we should be careful, and he supervised the matter of the resolution, and saw that the minutes were properly drawn. It was practically fixed in our minds that we would institute a suit against Johnson to recover back this loan, before any of these resolutions were prepared. After the change in the ownership of the Corsicana National Bank and before these proceedings I remember that the loan Company owed the bank a note and I think something was said by the examiner on one occasion that the officers of both concerns were the same and that they ought to be separate, but I am not very clear as to that.

Before we made this deal to sell the Corsicana Cotton Mills, to the Land & Loan Company, the bank had made some effort to sell it, but I don't think it was ever offered for less than $65,000.00. We never made any well directed effort to sell it.

When we went into the bank, the Land Company owed the bank about $4,000.00, and I don't remember just when that was paid. I don't remember whether the Land Company was indebted to the bank in any sum at the time the trade was made between the Land Company and the bank. The proposition from the bank to the Land Company was that it would recognize its claim that it was justly indebted to the Land Company for these Fleming and Templeton notes, provided they would take the Mill for $65,000.00. The bank finally agreed to make that trade, carrying with it the agreement that they should deliver the Fleming notes together with such collateral as they might have. It seems that they had sold some collateral to the bank, 204 shares, for $6,000.00 and the bank in this matter agreed to accept the $6,000.00 back and surrender this stock to
77 them, so that they might make a tender in this trade and put the actual stock with the Fleming notes. My recollection is that the reason that at that time, or about that time, the Loan Company sold the Fleming stock to the bank for $6,000.00 was to take care of its obligations to the bank, which at that time amounted to

$1,000.00 and interest. Our attorney, Mr. Mays sent some letters to each of the directors with reference to who had originally made the loan to Fleming to Templeton, acting on behalf of the bank, prior to the bringing of the suit, and the bank was not advised through either Mr. Mays, Mr. Thompson or myself that any of the board of directors had anything to do with the actual making of the loan other than Dr. Johnson. We could not find out anybody else who had anything to do with it, and we therefore brought the suit against Dr. Johnson. The purpose was to sue those only who had been responsible for the loan. The two certificates of stock in the Fleming Ranch & Cattle Company which you hand me were issued one on July 26, 1909 for 204 shares of $100.00 each, and the other April 7, 1910 for 78 shares. Both were issued to the Corsicana National Bank. It is my understanding that on the dates those certificates were issued Dr. S.W. Johnson was a member of the board of directors of the Fleming Ranch & Cattle Company, the corporation issuing those certificates. The certificates are signed and issued by M. W. Townsend, secretary and Royal A. Ferris, president, with the corporate seal attached. So far as I know, it was not at the instance of the Corsicana National Bank, as controlled by Mr. Thompson, Mr. Mays, and myself, that those certificates were issued to the Corsicana National Bank. There was no request made to issue them to the bank.

I don't know how they came to be issued to the bank. These are the only certificates that I think were issued. They were sent through the mail to the bank. I think the people up there seemed to understand that this was a bank matter. I never saw but these two certificates. Nobody in the Corsicana National Bank ever had any stock in the Fleming Ranch & Cattle Company except as the result of the pool of the creditors about which I have testified.

78 J. A. THOMPSON testified as follows:

I am president of the Corsicana National Bank and have held that position since April or May, 1909. Prior to that I was connected with the First State Bank of Corsicana, which was organized under the banking laws of Texas. I organized that bank. I was familiar with what is known as the Jester and the Johnson interests in the Corsicana National Bank. I purchased the stock held by the Jester interests and also J. M. Bartlett's interest in the Corsicana National Bank. Those owning the Jester interests from whom I purchased were C. W. Jester, J. T. Jester, Judge Lee (C. L.) Jester, Dr. Hemer Jester, and I believe Hugh (H. B.) Jester. The aggregate number of shares that I purchased at that time from the Jester interests was, I think, 262. That would leave 30 or 40 shares that I took later. Prior to my purchase of this stock, my personal and social relations with S. W. Johnson had been pleasant, so far as I know. Mr. Johnson told me at one time that Mr. Jester would retire sometime in the future. I do not remember that he ever said to me that he expected the Jesters to retire. He talked to me about coming down there and being associated with him in the bank. That was while I was president of the First State Bank, which I had been conducting about two years prior to purchasing the Jester stock. Before taking over the Jester stock, I acquainted S. W. Johnson with the fact, and he said it was all right; that he would rather have me; that we could do better than he could have done with George Jester. There was no objection at that time by him, that I know of, to my becoming interested and associated with him in the bank. Something like forty days after my purchase from the Jesters, I bought out S. W. Johnson in the Corsicana National Bank. Dr. Johnson named the prices, and I gave it. After my purchase of the Johnson stock, I think I had about 600 shares. The total number of shares of the bank was 1000. I immediately sold Heflin 200 shares. After that I had about 410 or 412 shares, and say about 590 shares of the stock was owned by other people. Mr.

Heflin purchased these 200 shares from me between the date of my purchase from Johnson and the
79 time Dr. Johnson turned it over to me. After issuing 200 shares to Heflin, the remainder was issued to me. At the time of the Johnson purchase, the other stockholders of the bank were as follows: Mrs. W. D. Hannie, 35 or 40 shares (whose husband, W. D. Hannie, was the organizer of the bank and was vice-president of the bank at the time of his death); the Cerfs (I could not tell you how many shares they had); E. Raphael, 20 shares, Newbueg owned some, Mrs. Robbins, Trimble 15 shares (he was also an organizer of the bank, as I understand). I think we took all the stock Dr. Johnson had and he bought from some of his associates and allies, Travis Holland and Mrs. J. W. Edens, forty-five shares. Then Mrs. J. A. McGee was a stockholder. After I bought the Johnson holdings in the Corsicana National Bank, it was about thirty days, I think, before Johnson purchased the holdings of Mrs. J. A. Holland and Mrs. J. A. Holland and Mrs. J. W. Edens, Mr. E. N. Johnson was a stockholder then, and is now. Richard Mays, Fortson Brothers, A. J. Wareing, J. S. Eubank, and W. C. Eubank were all stockholders. I don't believe I can recall any more. At the time of my purchase of the stock from Dr. Johnson, there was no agreement or promise by me that I individually or the Corsicana National Bank would not enforce all the liabilities due it and owing to it, or would force all the liabilities against those who made these, Fleming and Templeton loans. That was never mentioned. At the same time I purchased the Jester stock, I sold my interests in the First State Bank to them, I thought it was agreeable to Dr. Johnson, because we had talked several times before that about it. The Jesters at the time the trade was made did not want me to talk to Dr. Johnson about it; asked me not to. In the meantime C. W. Jester took sick and died. We were under contract at that time. They were very anxious to go ahead with the trade, and I told him that Dr. Johnson and I had talked this over many times in a sort of general way and I didn't feel like closing this trade

unless he was consulted and I wouldn't do it, and I reminded them of the fact that C. W. Jester was the man who was to tell him. They didn't do it, and I told them I was going to do it, and so I told Dr. Johnson that I wanted to see him on some business. He was
80 at the cotton mill and he told me he was going out to Elk's Club in a few minutes, and he drove by in a buggy, and we drove around over town and I told him what had been done and what I expected to do, and so on. I immediately then went and closed my trade and exchange stock. That was the occasion on which Dr. Johnson remarked that he would rather be associated with me than George T. Jester, or words to that effect. He said they hadn't told him about it and they hadn't treated him right about it, but that it was all right. I think it was the next night that I met the Jesters and they indorsed their stock to me and I indorsed mine to them. After that purchase, I was the largest stockholder in the Corsicana National Bank. I had maybe a few more shares than Dr. Johnson. It was part of my trade with the Jesters that the board of directors were to elect me to an official position in the bank. They retained some portion of their stock and remained on the board of directors for some time after this trade, and attempted to elect me to an official position, but did not do so as Dr. Johnson and his associates objected to it. That precipitated the conflict between Johnson and myself that terminated in my purchase of his interests at a price named by him. I believe Dr. Johnson nominated me as president of the bank at a board of directors' meeting after he had sold out and after I had bought him out. It was after that that he bought the Edens and the Holland stock. I am familiar with the records you hand me of the Land & Loan Company and the Corsicana National Bank, and they are the original records. This check dated February 12, 1908, was signed by A. G. Elliott. I know his handwriting. I also know Mr. C. W. Jester's signature. I have been seeing it for twenty years. This is his siganture on that check under "countersigned." I have before me the original records of the Corsicana

Land & Loan Company. There is an entry here on February 12, 1908; "Fleming and Templeton, $600.00, February 12th." Credit interest is what it is. I don't know whose handwriting it is. I now have the card of the Corsicana National Bank which shows the account of the Corsicana Land & Loan Company with the Corsicana National Bank. It is an original record of the bank at that time, and is in Mr. Elliott's handwriting.

81 It shows on February 12, 1908 check No. 32 for $29,400.00 was charged up to the Land & Loan Company the bank paid a check for that amount of the Loan Company. I have here the original bank record of bills receivable. It shows on February 12, 1908, Fleming and Templeton $30,000.00 in A. G. Elliott's handwriting. That shows bills receivable of the Corsicana National Bank charged with $30,000.00. The $29,400.00 entry above mentioned is a credit to Fleming & Templeton's account. The difference of $600.00, as shown by the record I have here, as credited by the Corsicana National Bank on February 12, 1908, to interest account and charged to discount.

In my negotiations with the Jesters, they were kept from Dr. Johnson, I think. After those negotiations had proceeded awhile, a written memorandum of agreement was made between the Jesters and myself. Up to that time I had not told Dr. Johnson about the trade, because we hadn't traded. We had traded when we drew up the written agreement. I never told Mr. Johnson we had traded until after C. W. Jester's death, and at that time it was closed up. Before the stock passed, I told the Jesters I would not close it up until I found it was agreeable to Dr. Johnson, and if I found it was not agreeable to Dr. Johnson I would not have gone through with it. When I bought Dr. Johnson's interests later, he named a give or take price, put it in writing, and I preferred to buy from him than to sell to him, and did so. When I purchased the Jester interests, I think, I had two or three friends that probably had agreed with me that they would take a part of it. They were Mr. Hellin, Mr. Trice, and Mr. McClennan. They did not take a

part of the stock. That was just a part of the talk that was going on. They did not buy it; they wanted it. I would consider that I was under obligations to deliver a part of the Jester stock to others, but they would not have it; they got me hitched to a post on the outside and I couldn't deliver anything. I bought 252 shares from the Jesters and had the legal right to sell it, but nobody would buy it. Heflin would not buy it. I agreed to let Mr. Heflin have a part of the stock I bought from Johnson and I had traded. He agreed to take 200 shares before I paid for it; in fact, I never did pay for it. He knew the price I was to pay for it. I told him about it.

82 He was familiar with the bank's business only by living in the town. Before I bought this stock, I did not investigate the assets of the bank very thoroughly, but I went into the bank myself and looked at the books. I did not look at all of the notes, even the big ones. Some of them were not there. Some of the notes were hypothecated in New York. I could have seen the transactions, who were the makers of the notes, the amounts, and so on, from the records, but I did go through all of them. In the first place it would have taken two or three days to have gone through the bank, the different transactions, and in the second place I am not a bookkeeper. Of course I could have looked at the notes, but Dr. Johnson and I went there on one Sunday and we got the notes out and I looked at a few of them, and he told me something about them, and I just went ahead. I looked to my satisfaction enough to know that I was going to buy. Among the bank's transactions I learned of these Fleming and Templeton notes, but, while I don't say that anybody misrepresented anything to me, I really thought that those notes had been charged off. I understood at that time that they were charged off the books as a loss; however, probably we would get the money. There were some other notes, as I understood it, charged off too. Dr. Johnson did not keep anything from me as to those notes, as far as I know. I was acquainted with Mr. Fleming and Mr. Templeton, and I knew in a general way of their insolvent

condition. Dr. Johnson told me that while I was looking at the notes, and he told me they were charged off; I got that impression that way; that is the way I understood it. He said that Fleming would pay those notes; that he thought he could make it out of him and that he would do it at some time and if he did the bank would make that money. I bought my stock in the bank from Dr. Johnson under the belief that that transaction was a loss to the bank, but in the future it might make it back or might not, and if it did make it up in the future it was that much more than the books showed. I do not think I advised Mr. Heflin of that condition. He was anxious to buy in the bank. He told me afterward that he talked to Dr. Johnson. I was not in a position hardly to tell him. After he figured with me, he talked to Dr. Johnson.

That is what he told me. I did not know at
83 that time that, although the notes were charged off the books of the bank they were actually held by the Land & Loan Company, but these papers exhibited here show that. I do not know whether I had access to these papers then or not. We had the actual notes at the table in the directors room. I do not think we had the National Land & Loan Company's papers or anything of that sort. I did not go through the assets of the National Land & Loan Company and did not investigate its paper at all. I was not very familiar with the history of its organization. I suppose I know it was organized under the state law; I knew it now. I did not understand that it was there for the purpose of taking over the bad paper of the bank. I understood they had the same stockholders, but I don't know about having the same board of directors. I just understood that it was the National Land & Loan Company, to do business like the bank was doing. I didn't understand it was a side pocket of the bank. I supposed that they were loaning on land. My inference would be that it was there for the purpose of taking land paper which the bank could not take. I did not understand that it took some bad paper which the bank did not want to handle. I didn't inquire at that time why it was organized, and

I simply knew that a $50,000.00 company was there; didn't know whether it was organized out of a special dividend of the bank or how. In making my trade, they told me that the same people who owned the one owned the other, and that every stockholder in one got the same amount of one as he got in the other. I cannot say that I understood that the management of the two was the same practically. I considered that the Land & Loan Company was just thrown in. They told me that it was not worth very much, not much account. I considered the Land & Loan Company stock was worth something, but everybody I talked to told me it was not worth much Dr. Johnson and the Jesters. I didn't give it much attention or much thought or make
84 much inquiry concerning it. In my purchase from the Jesters, I understood the same thing about the Land & Loan Company. I would not pay as much for the Jester stock as I did for Dr. Johnson's. I paid 270 for the Jester stock and 275 for the Doctor's. I paid the Jesters more than the book value for the stock, but I considered it was worth it. I had made this trade and gotten myself out of the banking business. They were trying to hold me to it. If I hadn't ever started in it I would not have done it, but I didn't want to start anything that I could not finish, live up to, and I did it regardless of whether it was worth it or not. I knew that I wanted to carry out my contract with the Jesters. I didn't think the stock was worth that much at that time, but I thought it would be if everything went off smooth. I didn't expect all this trouble. This suit is not what I had reference to as trouble. Mr. Flint, a lawyer, first suggested this suit in going over the affairs of the bank on the loan company when I went in there and saw the condition of things. He wasn't a stockholder. I suspect I was the first stockholder of the Corsicana National Bank to suggest bringing this suit, which was about the first of 1910. Mr. Prince had been my lawyer for about twenty years up to the time I went in the bank, but he was not at that time. He was a good friend of mine, and I talked with him about matters. It might have

been three months and it might have been nearly a year after I went in there that I talked this matter over with him. From the time I bought Dr. Johnson out up to the time I suggested to any of the stockholders the bringing of this suit, my relations were unpleasant with Dr. Johnson. The occasion for the unpleasantness was that Dr. Johnson knocked me a good deal and caused lots of talk. That is the only thing that caused the unpleasantness. I hold no grudge against Dr. Johnson on account of the give and take proposition, and that had absolutely nothing to do with our unpleasantness. I did not bring this suit on account of any disagreement, in order to give him tit for tat. I took counsel and debated the thing and wanted to be sure that it was right. As to Dr. Johnson and I not being on speaking terms, I would
85 speak to him. I think that he has treated me the worst of any man that ever did that I had any business dealings with, but I had rather fix it one way or the other. I do not like to pass a man and not speak to him. I think the matter of bringing this suit against him is absolutely legitimate and right. Probably the first stockholder I talked with about bringing this suit was Mrs. Haynie. I think she said she had heard something about it before I talked to her. I also talked with Mr. Mays, who advised against it on the start. During the Johnson regime, Mrs. Haynie said that somebody asked her and she said that Dr. Johnson ought to pay the amount of the loans. She came into the bank, and we were talking. When I bought from Johnson, I did not say anything about bringing the suit, because I did not know anything about it. When I bought from the Jesters, I did not say anything about holding Dr. Johnson, and the Jesters did not suggest it. Dr. Johnson never told me to sue him. When I bought the 600 shares and let Heflin have 200, I did not suggest to Heflin the bringing of this suit, nor did he suggest it to me. All of the stockholders were about as anxious to bring this suit, when it came up at the stockholders' meeting, as the others. I wanted to bring it for the money there was in it for me and for the bank. I now own a little over 600

shares and out of whatever the bank recovers I get 60 per cent. At the first meeting of the Corsicana Land & Loan Company, at 2:00 o'clock p. m., January 11, 1910, the following directors were present: O. M. Peters, D. T. Walton, Clarence Erwin, W. M. Huggins, J. A. Harper, J. A. Thompson, J. D. Force, J. Heflin, E. M. Johnson. At that meeting J. A. Harper introduced a resolution calling on the Corsicana National Land & Loan Company to make a demand upon the bank. I suppose Mr. Mays, the attorney for the bank, prepared that resolution. The Land Company I do not think has an attorney. J. A. Harper was not a stockholder in the bank. He became a stockholder, owning one share, in the Land & Loan Company about two or three months prior to the meeting and after the suit was talked about. I think I gave him the share of stock which he owned, as a step towards bringing this suit. He was made a director. I voted for him as a director. I suppose I owned a controlling interest when he was made a director. At that meeting of the directors, Mr. Huggins was nominated for president by J. B. Fortson. He owned ten shares in both the bank and the land company, having bought them from me at $275.00. The loan company shares were thrown in with the bank stock. Mr. Huggins owned one share. He paid nothing for it but I am not sure who gave it to him. I do not think we discussed Mr. Huggins for the presidency of the land company until we got the directors. The intention of getting Mr. Huggins as a stockholder and a director was in order to bring this suit. He was not connected with the bank. Mr. Van Zandt, the bank examiner, would complain about this Land & Loan Company every time he would come here and he said that it should not be there. I think I told him that the same officers of the old crowd ran the Land & Loan Company, the same that ran the bank, which the books showed, and he suggested it ought not to be that way, that the bank ought not to have a concern that it traded with, and we told him that it was our intention to wind it up as soon as we could and get shed of it, and he said he would like for us to do it.

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Then we took counsel from our attorneys and then we sent and got these people. I do not deny that we gave these people the stock there. I want to emphasize that. I certainly gave it to them and asked them to come in there and officer this concern and make it legal. Huggins was not a dummy in the concern, and he was not acting for me. I told him I wanted him to go there and go on the board of directors. I do not think anything was said about who were to be the officers of it. They were all my friends. They were friends of the bank, and we wanted them to do it to make it legal. We had discussed the suit before that and decided that before we could sue Dr. Johnson we would have to have possession of this paper in the bank. I think we had advised with our attorneys and they stated to us that the officers of the Loan Company would have to be persons not interested in the bank. Mr. Huggins was my friend, and I asked him to get on that board, to officer the concern and make it legal so that it could do all of these things
87 that we are doing, and another thing so that Mr. Van Zandt every time he came there would not be jumping on me. Huggins is serving for no compensation. Peters also owned one share, for which he did not pay anything. Some of us gave him that share; I don't know who. He was made secretary. T. E. Walton and Mr. Urban also owned one share apiece, given them by me, I think. Mr. Urban is vice-president. Peters, Walton, Urban, Huggins, and Harper owned one share each, which was given to each of them for the purpose of making the acts of the loan company legal. At the directors' meeting of the Land & Loan Company, the resolution which recites that, whereas Fleming & Templeton were insolvent and whereas their paper had been illegally and wrongfully transferred to the Land & Loan Company: Therefore, be it resolved that a committee be appointed to make a demand upon the Corsicana National Bank for the return and repayment of said money, was voted for by Peters, Walton, Urban, Harper and Huggins (who owned one share each). Thompson, Forston, Heflin and Johnson did not vote, as the minutes

show. We did not want to act in what the lawyers said was a dual capacity. We were directors in the bank, and that is the reason we did not do it. Mr. Mays and Mr. Prince, our lawyer, told me not to vote, and we acted on their advice. I was trying to make the loan company's acts legal, and of course I do not deny that I got counsel, tried to do it right. I was trying to do what was right, and I did do it that way. There were two thoughts in my mind with each step I took; to have the land company act independently of the bank and bring in this claim and to fix things so that every time Van Zandt came here he would not be asking about this thing. I did not ask these people to vote for that resolution. I advised with them when I first went on the board of directors and told them that I wanted to legalize that concern; advised them as to other business from time to time. I only just told them in a general way what we wanted them to do. I asked them to go on there and officer the thing. They had been on there two or three
88 months before this resolution was passed. When we met that night, all we did was to elect these officers and pass that resolution. The meeting was called for the purpose of doing this very thing. The men who voted to pass the resolution understood, I think that all of the stockholders wishes that resolution passed. These people, most of them, are my friends, and I asked Harper and Urban, I think, and someone else asked the others to go on that board of directors. At the stockholders' meeting, just prior to the directors' meeting on January 11, 1910, Richard Mays was elected chairman of the board of directors, and the board of directors was elected, including Heflin, myself and the five men with one share each. After these people were elected, Mr. Peters offered the same resolution above mentioned as coming from the directors' meeting and Mr. Walton seconded it. I presume the same resolution was passed at the stockholders meeting and the directors meeting; the minutes so show. I remained as president of the bank, and subsequently the directors of the Land & Loan Company took up with me the matter of paying the $30,000.00,

I expect that it was my desire that that be done, and I told some of them. Heflin told some of them I do not know whether Mr. Mays told some of them or not.

At 7:30 on the night following the meetings above testified about, the stockholders of the Corsicana National Bank met. That meeting was called for the purpose of electing directors, and they were elected. On the same night the stockholders took up the questions of the Land & Loan Company demanding the repayment to it of $30,000.00. At that meeting, Mr. W. M. Huggins, as president of the Land & Loan Company, appeared. I expect I knew in a general way that he was going before the stockholders that night, to present the claim of the Land & Loan Company. I do not know who wrote the formal demand which was presented at that meeting, nor by whom it was signed. I was chairman of the stockholders' meeting of the bank. Mr. Heflin offered a resolution which stated in substance that the stockholders would take it under advisement. I was one of those who took it under advisement. I wouldn't
89 say that I had my mind made up at that time what I was going to do. We were ten months trying to run that thing down, find who was liable and who was not liable. I expect I knew at that time that the bank would accept the demand, but I do not know whether at that time my mind was made up or not. Before these meetings, I had discussed this matter with the officers and lawyers and had made up my mind to sue Dr. Johnson if it was legal, and had been advised by my counsel to take certain steps to make it legal, and these steps on the 11th day of January were in pursuance of that advice. At the meeting of the stockholders of the bank on the night of January 11, 1910, I had made up my mind to assent, so far as I was concerned, to the demand of the loan company and pay it back this $30,000.00, if it was legal, and also to bring this suit against Dr. Johnson, if it was legal. On the night of January 11, 1910, after the stockholders had adjourned, the directors of the bank met I was one of them, and was also president of the bank. Mr. Heflin and Mr. Mays was each vice-president.

The directors then took up the presentation of the claim from the loan company. I believe the board of directors told me to make a settlement as I thought best. A resolution was passed giving me the authority to treat with the committee from the loan company. If the minutes say so, then I voted for that resolution. Armed with that resolution, I went to treat with the committee of the loan company. I thought they would do just what they did or any other plan that was advantageous. Those people were my friends, and so far as I know they did what I wanted them to do. So far as I know, these books and papers give the entire history. My recollection is that some of the directors of the loan company came to me and wanted to talk to me about it, and I made them a proposition and they talked it over and decided to do it. I told them we would recognize their claim and pay for it if they would buy our mill. The bank owned a mill down there. I expect the matter of making that mill proposition was discussed with the lawyers. One reason the mill was brought into the matter was that it was absolutely a disgrace to the bank to own it, and
90 we had charged it off. We weren't carrying it on the books. It belonged to the bank, but we had charged it off teetotally from the books, and of course we were glad to trade it to the loan company, because they could hold it legally. The bank still carried the mill as a charged off asset. It still belongs to the bank. Just like I have some notes charged off, if I recover them it comes back to the bank. I regarded the claim as worth a good deal. I think it is worth $10,000.00 now. We had carried it for $65,000.00, and it was worth it and was not a loss. The reason it was a disgrace was that no bank on earth could run a cotton mill. Another thing, Mr. Van Zandt came on the scene and said he wanted it off. Mr. Van Zandt did not ask me to bring this suit or advise me to bring it, but he told me two or three times since then that he hoped I would win it, that I was entitled to win it. He told me that the last time I saw him. We incorporated into the re-transfer after advising with counsel the proviso that if the land company

would take over the mill property we would do this; counsel advised me about the legal part of it. So far as the business end of it is concerned, I don't think I was advised. It was a financial benefit to the bank because it had this asset which did not show on the books. We only showed $225,000.00 capital stock, surplus and undivided profits, and yet we had an asset of $65,000.00 charged off, so far as the stockholders were concerned. At the time the bank turned the mill over to the loan company it did not get any more money out of it, but it has since then. We didn't have any right to transfer the mill to the loan company originally. When this deal was made we took the loan company's paper for $35,000.00. It would have been just as legal to take $65,000.00 of the Land Company's paper as $35,000.00, but it was not worth anything if it had been done that way. The loan company's paper was not worth much, as it had only a little over a thousand dollars besides the mill, but we did this because the land company could own the mill. We thought this claim was just
91 and legal and we said: "All right, we owe you $30,000.00; here is an asset that we cannot run; it belongs to the bank. It is a sore-eye, but it don't make any difference, it if is worth five hundred dollars it is not proper for the bank to own it; the Department would get after us." We said, all right, if we can get rid of this property we will trade with you. If Dr. Johnson's matter had not arisen, I suppose we could have sold the mill property to the Land & Loan Company for $65,000.00, and taken its note for that amount, secured by the bonds and stocks of the company. That would have made the note good pro tanto for as much as the stock and bonds were worth. The property was worth $100,000.00, to one who knew it. It was not worth ten thousand dollars to me. The Land Company finally sold it after that for $50,000.00. We finally sold it for that money. I think the physical properties are now worth one hundred thousand dollars. The physical properties then and now are practically the same, but the value might not be the same.

Cotton results are conflicting. Cotton is cheaper now and they can make money. They cannot make money on 11-cent cotton. I am no cotton mill man, but I happen to know that. Any cotton mill man can tell you that. If you had a mill on your hands and was losing one thousand or two thousand dollars a day, it would be a hard proposition, and that would certainly affect the physical assets that you had. The land company disposed of the mill property sometime either in February or March of this year. It bought it in January of last year. I think the mill properties are worth more now than when we sold it, but the mill was not doing any good. You couldn't hardly sell a mill in Texas. I don't think there was any particular change in value of the cotton mill property from January, 1910, to January or February, 1911. Cotton was high, and they weren't doing any good. The bank was running the mill when I went in there, and we closed it down. Mr. Huggins advertised for bids to sell the mill, and Woodrow & Sheehey of Sherman, and some others from Navarro County bought
92 it. Mr. Huggins was president of the loan company when the sale was made, but I don't know whether he found the purchaser as I found him. Mr. Eubanks knew two young men at Sherman and took it up with them and talked to them about it and they came down there to Dallas, and I met them here once or twice. Negotiations were pending two or three months. I did not visit them in Sherman. They were in Corsicana two or three times. Mr. Peters carried them over to the Corsicana plant. The deal was talked over with the entire directors. Mr. Huggins, who was president, made the particulars and agreed on it. We asked $60,000.00 for the mill. I asked them that when I met them up here. I talked to Huggins and the balance of them about it. The mill was deteriorating quite fast. Of course that was a good deal of money when it was standing still, and we had to keep two or three hired men there. All of the land company stockholders finally agreed to sell it, for $50,000. I did what I could to sell it. Mr. Heflin, Mr. Huggins, Mr. Peters, and myself made that trade. I think that

was all. There was no commission paid. I think we told Mr. Huggins to sell it for $65,000.00, and I told him I would treat him right, but we paid him no commission as he didn't sell it and was not entitled to it. He never mentioned any commission. The cashier of the bank found the bidder, the president of the bank conferred with the buyer, and Mr. Heflin talked with the buyer. We were all directors of the loan company, and I thought we ought to do the best we could for it. I didn't think we ought to sit down because we had unloaded it on the loan company and let it rot down. Part of the $50,000.00 was paid to the Loan Company in money, and a part of it in notes, and they have it. I think it is good; I wouldn't swear to it. I think the bank still holds the loan company paper for $35,000.00 as a credit. In the $50,000.00 deal for the mill, $12,000.00 cash was paid. Since then no paper has matured, except a small payment the other day for two or three hundred dollars, which was paid. The purchasers of the mill gave their notes to the Loan Company, and those notes are in the Loan Company, which is still a going concern. The
93 $12,000.00 went to the bank, because the Loan Company owed the bank. The bank sold the mill to the Loan Company for $65,000.00, evidenced by $30,000.00, Fleming & Templeton notes and the Land & Loan Company's paper for $35,000.00. The loan company purchased from the bank the stocks and bonds of the mill, and that carried with it the physical properties. That is the way I understand it. It carried everything. The $35,000.00 of paper executed by the purchasers of that plant is owned by the Loan Company, and no one has indorsed it. The Loan Company holds it. Mr. Huggins and Mr. Ernest Johnson have those notes in custody, and there is a little file we keep them in in the vaults there at the bank. Some of them are due next April, I think. When they mature, it will be about $33,000.00, which would go to the Land Company. I suppose we will then get the money, as we expect the Loan Company to pay its debts to the bank. I am going to try to see that they do. In this deal with the Loan Com-

pany the bank reserved supplies of cloth and cotton and oils, and so on, which it did not sell, but those who bought the mill from the Loan Company took them away from us. When we sold it to these people we sold it with the understanding that they did not get anything but the plant, and so stated in our resolution. Mr. Whitesell and Capt. Allen and some other people took a good block of the stock, and it went along a month or so and I told Mr. Woodrow, who is manager of the mill, "You owe the bank for that stuff and the unearned insurance, because the bank never sold that to the Loan Company, and the bank never sold it to you." He said that he thought he bought it. I never could get it in my mind about that resolution, but we had a meeting, had Mr. Woodrow to call them together, and I told the directors I thought certainly it is that the new crowd owes the bank for the stuff you have used, and they says they thought we were buying it all. There was a misunderstanding as to the trade, but a few weeks ago the bank got about $8,000.00 and some odd dollars unearned insurance. We told them we would give them the other. If there had been no misunderstanding, I think we ought to have
94 gotten about $15,000.00. When we sold this mill for $50,000.00 we got $12,000.00, the equivalent of cash. I think the Sheehay note for about $8,000.00 each, with six per cent interest, was due in four years. My holdings represented $20,000.00. I think Mr. Heflin took $4,000.00. The stock sold at the rate of fifty cents on the dollar. I don't know how much Mr. Mays owns. Mr. Huggins took $2,000.00 in it, making $4,000.00 in stock. I took $10,000.00 in money, making $20,000.00 stock. When this deal was made with Woodrow and Sheehay, it was not understood what I was to do. They bought a third interest in it; they weren't able to buy it all. We simply sold to various parties whatever stock we could. Mr. Whitesell took $10,000.00. We arrived at the price we should pay for the stock when they said they were willing to take $50,000.00. We bought our stock from the Loan Company, and they did the same thing. I think the property is worth $100,000.00, but we

did the very best we could. I was interested for the Loan Company in getting the biggest price I could, and I was interested as an individual in buying as cheap as I could. The way I reconcile those two negotiations, is this: That mill was not worth ten thousand dollars to me. If you want to know how I arrived at it, we asked $65,000.00, for the mill, and they said they would not give it, and finally made a proposition of $50,000.00, and we talked among ourselves, and knew that it was staying there doing nothing and thought we had better sell it for $50,000.00 than let it go to the bad, and these people said they would take a third interest in it provided we would get a lot of people to go into it and help finance it. I think the Land Company made a pretty good deal. I don't know who represented the Loan Company in selling the mill; just a little job-lot of us. I acted for the bank in transferring the cotton mill to the Loan Company but I did not act for the Loan Company in selling it to the syndicate. I did not act for anybody. I bought stock in it. I was a stockholder in the Loan Company. I reckon I was acting for myself and everybody interested in it. The Loan Company owned and was trying to sell the mill, and I was representing the Loan Company in trying to sell the mill. When I bought stock
95 for myself, I guess I made the trade with Huggins. When Huggins bought stock, I do not know who he acted with. He might just have gone in and bought it himself without permission. I was glad to get him to take some interest in it, but he didn't buy from me. We could have held the mill property charged off the books of the bank without transferring it to the Loan Company, if we had wanted to, but I don't know whether I could have sold it for the bank. I tried but never did. I think the crowd we got in the loan Company helped to sell it. The Loan Company could sell it better than the bank. In the first place, the bank had owned the mill just as long as it wanted to. The very fact that the bank owned that mill was a disgrace. It didn't care if it was charged off. It showed bad management. I do not say that with disrespect, but a bank should never

own a thing like that. I didn't want to go around over the state and say to people my bank here owns this mill; don't you want to buy it. I didn't want to admit that. It was a disgrace to do it. I [If] the Land Company owned the mill, with people in it not interested in the bank, they could say: Gentlemen, this concern owns this mill, let's get it on its feet and make some money and help the town. Capt. Allen and Mr. Whitesell came to us and said, if you want to re-organize that mill, we will take some stock. Allen says, I will take five thousand dollars, and if necessary more. In that instance, the Loan Company served a useful purpose for the bank. I have heard of no change in the ownership of the Land & Loan Company today and what it was during the Johnson regime, but it is worth more now than it ever was. Our lawyer did not advise us to make the deal to transfer the mill to the Loan Company, but he told us that it was a legal thing to do.

I never talked to Judge McKie about the cotton transaction or the Fleming and Templeton transaction. I talked to Mr. Mays and Mr. Prince about it, after we got out directors. I think the question came up about making this thing good, and I think then we talked with Mr. Mays about making this trade. I did not talk with him about linking the cotton and the Fleming and Templeton transactions. I think we went ahead and organized the National Land & Loan Company and we found that the Loan Company would have to have something if they gave the bank this $30,000 in notes, and of course representing the bank we wanted to give them the rottenest egg we had, and we gave them the mill. I might have discussed this with Mr. Mays as to whether that would be all right, and they said if it was a bona fide trade it would be. I was unwilling to take $30,000.00 out of the vaults of the bank and turn it over to the Loan Company for its paper. It was not such a shocking transaction as to make me want to rue back by taking money out of the bank and turn it over to the Loan Company, although it was unjust and wrong. If left to me, I would not have done it. As a director

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in the Loan Company, I would not have demanded of myself as a director in the bank that this trade be undone. When I voted for the demand by the loan company for $30,000.00 on the bank, I did not expect the bank to pay $30,000.00 cash. I would not have paid it, unless I thought that I had to. I did expect to pay $30,000.00, but I do not know whether in cash or not. I would have paid it in cash before I would have had a lawsuit, if I had been advised that it was a legal claim, by either Mr. Mays or Mr. Prince, our attorneys. At the time the bank had this physical property of the mill on its hands, part of the time it was running and part of the time it was not. I charged the mill off after I came into the bank. At that time, I would have taken $50,000.00 for the mill, representing the bank. I would not have given anything for it for the bank. In the first place, the Comptroller would not have let me bought it. It is problematical what it was worth to the bank as an asset. At one time Mr. Wofford and Mr. Lipsitz came to Corsicana, and we made the proposition to them of $55,000.00, and they said that was too much. They said, will you take $50,000.00, and I said, No, we won't take that. The truth of the matter is, those people were trying to get an option on it and then resell it. I think at the time we charged it off, I would have been willing to take possibly as little as $25,000.00 for the mill, if I thought we were going to have to keep it. It stood the bank $65,000.00, I suppose. That was what we were carrying it at when I went in there. On January 14, 1910, the board of di-

97 rectors of the Land & Loan Company met. (Counsel states those present: Thomas, Heflin, not voting; Huggins, Peters, Urban, Harper, and Walton, voting.) Those five men voting for the resolution to close the trade did what I wanted them to do, but I won't say I told them to. I was mighty glad for them to do it. They acted for the National Land & Loan Company and not for me; they had one share of stock each. I do not remember ever discussing with Mr. Huggins the making of that trade as it was carried out. I simply say this, that we asked these people—W. M. Huggins, O. M.

Peters, Clark Urban, C. C. Walton, and J. A. Harper to officer that concern, make it legal and do whatever they thought was best, do the best thing they thought for it. I do not ever remember ever discussing with O. M. Peters whether or not he should vote for that particular proposition. I remember talking to Clarence Urban in a general way, and I told him to do the right thing about it. I do not know whether I talked with him about this particular trade, but I expect I did. I do not know whether I talked to J. A. Harper about that particular trade, but I expect I did. I do not remember talking to Mr. C. C. Walton about that trade.

The five directors in the Loan Company, O. M. Peters, C. C. Walton, Clarence Urban, W. M. Huggins, and J. A. Harper, owned no stock in the Corsicana National Bank, nor were they in any way connected with that bank.

A. G. ELLIOTT testified as follows:

I am vice-president of the City National Bank of Corsicana. I was formerly connected with the Corsicana National Bank, for about eleven years. I began as bookkeeper and was then assistant cashier for about five years. I severed my connection with that bank at the same time Dr. Johnson did, April, 1909, I think. I was connected with the bank as assistant cashier in June, 1907. About the latter part of May or the early part of June, 1907, Mr. Fleming and Mr. Templeton were in Corsicana, and Mr. Templeton was in the Corsicana Na-
98 tional Bank discussing the matter of arranging these loans with Dr. Johnson, and Dr. Johnson called me to the front and told me what Mr. Templeton wanted. Dr. Johnson, myself, and Mr. Templeton were present. Mr. Templeton said that he wanted to borrow $15,000.00. That he and Mr. Fleming had dissolved partnership, and that he was going to purchase Mr. Fleming's stock in the Western Bank & Trust Company at Dallas, and that Mr. Fleming was going to retire. Dr. Johnson asked Mr. Templeton what he was worth, and

Mr. Templeton said that he was worth a hundred thousand dollars over and above indebtedness, and he asked him what Mr. Fleming was worth and he said that Mr. Fleming was worth a half million. That was shortly before the train left. Mr. Templeton retired, and Dr. Johnson discussed it further with us. The Doctor said that he hated to make such large loans in the absence of Mr. Jester, and that he was going to talk it over with George T., I mean, in the absence of Mr. C. W. Jester, who was absent at Hot Springs. He said that he was going to talk it over with George T. and George E. and sent our negro porter out for Mr. George T. Jester, and later I saw them retire to the back room, the same afternoon—Dr. Johnson and Mr. George T. Jester. That was the last of it until I saw Mr. Johnson after the train left that afternoon. He remarked that Mr. Fleming did not want to sign Mr. Templeton's note. He stated that Mr. Templeton was able to make a good loan without his name, and I asked Dr. Johnson if he was going to accept it that way, and he said certainly not. When Mr. Templeton was in the bank, Dr. Johnson told him that he wanted Mr. Fleming to sign the note with him, and Templeton said that he thought he was able to give a good note, but that Mr. Fleming would sign with him he supposed. He did not say anything at that time or place as to whether he was willing or objected to him speaking to Fleming. I was familiar at that time with the reputation of Mr. Templeton financially, in a general way, and it was good. Independent of his statement, I believed he was solvent to the extent of a hundred thousand dollars. I considered him a good risk for a loan of $15,000.00,

99 individually. I was familiar at that time with the financial reputation of Fred Fleming, in a general way, and he was considered worth half a million. Up to that time I had heard nothing against the integrity of these men, but I had heard that Mr. Fleming was charging usurious rates. Upon the dissolution of this firm, our bank simply took over their deposits, except a few interest bearing saving accounts. We considered the acquisition of their depositors valuable

to our bank. I carried out the clerical work of making those loans, which was in line with my regular duties. In pursuance of the loans made, they sent their notes down to the bank from Dallas. When the notes came, they each had signed for the other. One note was signed Fred Fleming, D. A. Templeton, and one note was signed D. A. Templeton, Fred Fleming. From my view point, as an officer of the bank, one was a principal and one a surety on one note, and one a principal and the other a surety on the other. In sending them exchange for those notes, it was made payable to Fleming & Templeton. I presume that was done at Mr. Templeton's instance. He was in Dallas at that time. My recollection is that I attended to the work of preparing this exchange. I did that on my own initiative, after my talk to Templeton. It was not directed to be done by Dr. Johnson, and Dr. Johnson had nothing to do with it, so far as I know. The first Bank Examiner that visited our bank after these loans were made was J. W. Hertford, as I remember. Those loans were discussed, and I explained to him, as I have previously explained here, that they represented two different and distinct loans, in one instance Mr. Templeton principal and Mr. Fleming surety, which statement I made to him in his official capacity, and in my official capacity. He said he ought to have something to that effect, if the loans were made that way. I wrote to Mr. D. A. Templeton, giving my understanding of the transactions and asked him to write me fully, and Mr. Templeton wrote me that I was correct. I have neither the original nor a copy of the letters between me and Mr. Templeton. I have not access to the
100 bank correspondence . . this time, and have not had since this suit was filed. I have not been denied access to the bank. I have requested you, Judge McKie, and Dr. Johnson to obtain for me the letters to and from the Comptroller and letters bearing on this case. A copy of my letters to Mr. Templeton was kept in the bank. The original from him to me was kept in the bank up to the time I left. The correspondence was kep in the bank in the letter files or attached to copies of th

notes. It was in the regular and usual place and not hid away. Mr. Templeton is now deceased. He has been dead about two years, I think. That correspondence was had at the instance of the Bank Examiner, whose name I have given. I have been with the bank with which I am now connected since I severed my connection with the Corsicana National Bank, which is three years this month. I have been in the banking business in various capacities for a period of between thirteen and fourteen years. In my opinion as assistant cashier of the Corsicana National Bank, it was not a violation of the excess loan statute to make these loans as they were made, according to my interpretation of the law. I cannot say whether in banking circles it is the custom to make such loans without their being considered a violation of the law. I know three National Bank Examiners. I have known more, but some are dead and some have retired. They take different views as to whether a loan to a surety is to be considered a part of the amount in passing on his liability. Mr. Van Zandt takes the view that it should be against him. There was no expression from Dr. Johnson as the time this loan was made that indicated that he knew that these loans were excess loans. These loans were discussed at the directors' meeting and later on the Finance Committee, that handled the affairs of the bank and reported on such as they thought good and not good. There is no special mention made of these loans in any minutes made by anybody connected with the bank. The following December, I prepared the renewal notes, after Dr. Johnson had discussed the matter over the phone with Mr. Fleming and talked it over with Mr. C. W. Jester. In the phone conversation, Dr.
101 Johnson asked Mr. Fleming if their financial standing was good and if they thought they could meet it when it matured. Dr. Johnson called Mr. C. W. Jester to the phone booth during the conversation, and Mr. Jester heard the Doctor's conversation and on the strength of that conversation had these renewals. I never heard any discussion between Dr. Johnson and Mr. Jester after the phone conversation, except

in a general way. Of course, we would have liked to have had our money. We concluded it was best to renew them at that time. I did the clerical work surrounding this transaction, like other transactions. I worked on the typewriter at that time. Each of these notes was subsequently disposed of to the Corsicana Land & Loan Company, at the instance of Mr. C. W. Jester and Dr. Johnson. C. W. Jester, President, indorsed these notes to the Loan Company. The purpose of this Loan Company was to take care of such loans as the bank could not make, prohibited by the banking laws, and occasionally excess loans—it did not come under that head, however—and also undesirable paper of the bank generally that we were forced to make disposition of. With reference to the dissolution of these gentlemen, I presume they wound up their business down there; they retired from the banking business. My recollection is that it was advertised in the papers and by circular notices also.

On the day these loans were agreed upon, Fleming and Templeton were both in Corsicana. I do not recollect whether they were both present during the negotiations with Dr. Johnson. I won't say they were not. At the time I was present, and discussing the matter Fleming was not there. I think Fleming went to dinner, perhaps, with Dr. Johnson, and he was in the bank previous to that, on the same day. I knew that Fleming on one note and Templeton on the other were negotiating to borrow from the Corsicana National Bank an aggregate of $30,000.00. I got my information that afternoon that Fleming wanted to borrow $15,000.00, from Dr. Johnson alone. I heard no negotiation between Johnson and Fleming and Templeton while they were in the bank together. The only conversation I heard at any time between Dr. Johnson and either or both Fleming and Templeton was at the time I have testified about. I suppose I was present then probably fifteen minutes; that conversation took place in a little front place in the bank. When I saw Dr. Johnson and Mr. Jester have their conversation, my recollection is that neither Mr. Fleming or Mr. Templeton were in the

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bank. I do not recall seeing George T. Jester in the bank at any time when Fleming and Templeton were in the bank. I was in the bank about the time Mr. Templeton left after the conversation I have testified about, to catch the north bound central. I left the bank that evening between five and six. D. N. (Neal) Rice was in the bank there. I got word that afternoon from Dr. Johnson that the loans would be made. He did not direct me to draw the notes; Mr. Templeton drew two notes for $15,000.00 each and mailed them to Corsicana, but we did not accept them and two others were prepared in lieu of them. We would not accept the notes Templeton had prepared, because they were made for a year. The two we prepared were afterwards signed and sent back to Corsicana. I understand that prior to this time the Western Bank & Trust Company had been engaged in business at Corsicana with a branch. Fleming and Templeton were engaged in business too. I believe on that banking house on one side of the door was Western Bank & Trust Company and on the other side Fleming & Templeton, Bankers. In Dallas the same men were engaged in operating what is known as the Western Bank & Trust Company. I do not know whether they operated as the firm of Fleming & Templeton in Dallas also, but they had also some branch banks at Waxahachie, Hillsboro, and Mexia, I believe. My understanding is that Fleming & Templeton and the Western Bank & Trust Company got up some kind of a letter which they sent to their depositors acquainting them with the fact that they had turned over their accounts to the Corsicana National Bank. I do not know how it was signed. I cannot state positively what the letter said or who signed it. Fleming & Templeton also published in the papers something about the dissolution. The sum and substance of it was that they had gone out of business in Corsicana, and that the Corsicana National Bank had taken over their deposits. I do not recollect the statement
103 that they had dissolved business all over the whole country. The first definite knowledge I had of the pending trade was the day the loan was agreed

on. One reason for making the loans was that we were going to get the deposits of the Western Bank & Trust Company and Fleming & Templeton. The notes afterwards bought from Tally & Dunn were all payable to the Western Bank & Trust Company. When we took over the $30,000.00, depositors of Fleming & Templeton, Tally brought the money, partly money and partly exchange, with the list of depositors. I think some of the exchange was on St. Louis and may be some on Dallas. The draft for $32,000.00 which we gave Dunn & Tally has no relevancy to this matter, because that was afterwards and represented money that we paid them for the notes that we purchased. Dunn & Tally bought all the bills receivable of Fleming & Templeton. I did not know at that time that Fleming & Templeton tried to borrow this $30,000.00 and liquidate their business there from the First State Bank before they came to the Corsicana National Bank. I did not know that they had tried to make an arrangement with the City National Bank, except Doctor told me that he thought they were figuring with the City National Bank. I have before me the first two notes for $15,000.00 each that were signed by Fleming and Templeton. There is nothing on the face of those notes to indicate that these men signed one as principal and one as surety or that they are other than joint makers of those notes. There is nothing on these renewal notes dated December 10, 1907, which I have here, to indicate that Fleming and Templeton signed other than as joint makers. I presume I made out the exchange in paying these men the money because Templeton told me to do it. Mr. Templeton attended to the details of it, so far as I know. He did not say that he acted for himself as well as Fred Fleming, but I acted on that assumption. I do not know that there was any final word to pay over this money to these men. I just carried it out; I issued the draft. I knew it was to represent the proceeds of these notes. I do not know whether Dr. Johnson knew I had paid out the money or not. He authorized me indirectly to pay the money. I drew

the draft which you hand me for $29,100.00;
104 that is my handwriting. It is payable to Fleming & Templeton. I know Templeton's handwriting, and it is indorsed Fleming & Templeton in Templeton's handwriting. When these notes were renewed in December following, there might have been some correspondence between Dr. Johnson and Fleming and Templeton about their financial standing. I do not remember whether Fleming had executed a deed of trust to secure the depositors of the Western Bank & Trust Company, which was in a failing condition at that time; I remember he executed a deed of trust, but I do not remember if it was at that time. The first I knew of it, it was in the News. The deed of trust itself was published in the News. I do not recall that that was prior to the renewal of these notes. Along about June 10, 1907, the date of these two notes, or shortly afterwards, after this transaction reflected itself on the books of the bank, the bank was examined by one of the bank examiners. He accepted my construction of it, and I do not know whether he reported it or not. He passed it so far as we were concerned; whether he made any exception to the Treasury Department, I cannot say. I kept up with the correspondence of the bank and formed most of those letters to the Department, usually after conferring with Mr. C. W. Jester. The letter you hand me dated June 22, 1907, from the Department looks like the one we got from them. It shows that the bank had been examined on the 13th of June. These notes, I think, were transferred by Mr. Jester and Dr. Johnson to the Corsicana National Land & Loan Company in February, 1908. About that time I think that the Western Bank & Trust Company had gone into the hands of a receiver. I do not think my recollection is that Mr. Fleming was wrecked at that time; I thought he was still in pretty fair shape. I do not think Templeton's financial condition at that time was quite as good. On the 6th day of February, 1908, six days before we transferred these notes to the Land & Loan Company, the Bank Examiner made an examination of the bank. We got a letter from the Comptroller

of the Treasury from Washington on February 26th, again calling attention to Section 5200 of the
105 Revised Statutes as amended. The Treasury Department required a detailed reply, and I prepared an answer to that letter, with suggestions. On November 26th, I think I got a letter from you (Mr. Mays) copy of which you hand me. I came up to see you in your office and stated to you just about what I have stated here. I do not know, but I think I have been to see you twice in person.

There were identified, offered and received in evidence of the following writings and documents:

EXHIBIT "A".

Office of:
[Seal] Treasury Department.
Comptroller of Currency.
Address reply to "Comptroller of Currency."
In replying please refer to "L 3645 G. T. President.
Washington, D. C., June 20, 1907.

Corsicana Nat'l. Bank,
Corsicana, Texas.

Sir:

The report of condition of your bank on May 20, 1907, shows the following loans in excess of one-tenth of its capital stock and unimpaired surplus:

Corsicana Cotton Mills	$52,985.85
Jarrell Elliott Dry Goods Co	20,800.00
Shwarts & Co	28,176.52

Immediate arrangements must be made to reduce these loans to the statutory limit. An observance of the law in this respect is insisted upon and will be strictly enforced. Please advise this office when these loans have been reduced. Respectfully, T. P. Kane, Deputy Comptroller. Excessive loans. Ed. Apr. 15-07-5,000.

106 EXHIBIT "B".

E. S. W. Office of:
OT [Seal] Treasury Department S-3645
Comptroller of the Currency.
Address reply to "Comptroller of the Currency."

Washington, June 22, 1907.

President, The Corsicana National Bank,
Corsicana, Texas.

Sir:

The report of an examination of your bank made on the 13th instant has been received and has had careful consideration.

The Loans of your bank are limited to $20,000.00, as prescribed by Section 5200, U. S. R. S., as amended. Notwithstanding former admonitions, the following accommodations are in excess of this amount:

Corsicana Cotton Mills	$24,000.00	
Do. (overdraft)	20,395.02	
		$44,395.02
Schwartz & Company	12,000.00	
Do. (overdraft)	19,770.06	
		$31,770.06
Fred Fleming, D. A. Templeton		$30,000.00

While the security protecting the Schwartz & Company indebtedness is said to be ample, it is reported that the bank desires to give this concern more time in which to make settlement. The loan to Fred Fleming has become excessive and the indebtedness of the Corsicana Cotton Mills has been largely increased since the last examination. Immediate arrangements must be made to reduce these loans to the legal limit. An observance of the law in this respect is insisted upon and will be enforced by application of the penalty provided by Section 5239, U. S. R. S., if persistently disregarded. You are requested to notify this office when the reductions have been made.

The following past due loans are very undesirable and should be collected as soon as possible:

107	J. F. Maxwell	$5,102 00
	Claude W. Jester	2,900 00

Overdrafts are reported amounting to $70,794.60, including about $40,000 which is listed with the excess loans. The practice of granting credit in this form is being carried beyond prudent and reasonable limits, and should be materially restricted or entirely discontinued. The existing overdrafts should be retired as soon as possible. You are advised that the loan of $2,900 to S. W. Johnson, which is secured by a vendor's lien must be disposed of as a national bank cannot lawfully make loans on or purchase paper secured by real estate in any form.

You are again reminded that the real estate acquired for debt in 1897 and 1900 must be disposed of in conformity with the requirements of Section 5137, U. S. R. S.

Reconsilements of accounts with correspondents banks made by one officer or employe should be verified by another in order that errors and discrepancies may be detected.

Loans and discounts should be verified at regular and frequent intervals.

The directors are requested to unite in making a prompt reply in detail to this letter over their individual signatures, stating that it has been read by them, and what steps will be taken to correct the matters called to their attention herein. The directors should sign the last page of the detailed reply and not a separate sheet attached thereto.

Respectfully,

WM. B. RIDGELY, Comptroller.

108 EXHIBIT "C".

Comptroller of the Currency.

ESW. OLT Office of:
[Seal] Treasury Department, S-3645
Address reply to "Comptroller of the Currency"

Washington, Feb. 26, 1908.

President, The Corsicana National Bank,
Corsicana, Texas.

Sir:

The report of an examination of your bank, made on the 6th instant has been received and has had very careful consideration.

In order to finance several large corporations and cotton firms the bank has, for several years past, persistently disregarded the admonitions of this office relative to extending excessive lines of credit to them in the form of direct loans and overdrafts. Over 44% of the total loans and discounts or nearly twice the capital of your association consists of accommodations made to five individuals or firms, while over 32% of the deposits subject to check are in the form of overdrafts. This unwarranted concentration of the bank's loanable funds indicates, not only an absence of prudence, but a failure on the part of the directors and officers to realize the reponsibilities of their trust. As a result of the director's disregard of the office admonitions and the limitations of banking, the association has become a large borrower; past due paper is excessive; and losses aggregating $95,-850.45, have been sustained.

Owing to the present tightness in the money market it will be difficult if not impossible for these corporations and firms to borrow funds elsewhere for the purpose of continuing their business operations and meeting their obligations to your bank and the association will indeed be fortunate if other and serious losses are not sustained before their accounts are entirely eliminated from the assets of the bank. Owing to an estimated loss of $95,-850.45, as enumerated below, which with the current

taxes, expenses, etc. Exceeds the undivided
109 profits, the surplus of your bank is reduced to $52,545.14, thus making the limit of loans of your bank $15254, as prescribed by Section 5200, U. S. R. S. as amended. Notwithstanding former admonitions the following loans are in excess of this amount:

C. A. Benton	$16,640.00	
Do. O-D	4,777.34	
Total		$21,417.34
Corsicana Cotton Mills	42,000.00	
Do- O-D	39,281.79	
Total		$81,281.79
J. K. Lotpeich O-D		24,411.29
Schwartz & Co. O-D		21,273.32
Fleming & Templeton		30,000.00

The Benton and Lotspeich accommodation appear to have been granted since the time of the last examination while the other loans listed above had been continuously excessive for a long period. You have been warned repeatedly, heretofore, that the loans of your bank must be kept within the statutory requirement, and that if it was not done, the penalty provided by law would be invoked against your association. These warnings, however, seem to have had no effect. Your bank has been most persistent in violating the law in respect to the limit of loans and a continuation of the policy will not be further countenanced. If your bank is to remain in the National System, it must be conducted within the provisions and limitations of the national banking act. If this cannot be done, arrangements should be made for its voluntary liquidation. Immediate steps must be taken to reduce all excessive loans to the lawful limit. Unless this is promptly done it will be necessary for this office to take such action as the case seems to warrant without further notice. The directors are requested to state, in their reply to this letter, what will be done, not only toward

a reduction of these loans, but an observance of the limitations of law hereafter.

The following losses are estimated on the above excessive loans.

110	Corsicana Cotton Mills	$42,000.00
	Fleming & Templeton	30,000.00
	Schwartz & Co. O-D	16,500.00
	J. K. Lotspeich O-D	2,000.00
	Total	$90,500.00

As these loans are in excess of the legal limit and were made in violation of law, the directors who are responsible for the loans or permitted them to be made should assume liability for any loss that may be sustained thereon and not throw the burden of such loss on innocent stockholders. When directors authorize or permit a loan to be made in violation of law, they are liable individually under Section 5239, U. S. R. S., for any damages which the bank or any person may sustain in consequence of their action.

Special attention is invited to the bonds of the Western Texas Compress Company and the Oil City Compress Company carried at a bank valuation of $39,435.85. There appears to be no market for these bonds at present and are not considered good assets as the examiner is of the opinion that they could not be sold at any price. In addition to the above bonds the bank has loaned the Western Texas Compress Company $9,000. The examiner reports the compresses are now idle and although no loss is estimated at present, this line is considered slow if not doubtful, as its future values appear to be problematical.

The loans of C. A. Benton and E. W. Caldwell should have careful attention with a view to their collection without delay.

The examiner reports as a probable loss the note of Claude W. Jester amounting to $2,000. This note has been in the bank several years and has been renewed

from time to time, and as Claude W. Jester is the son of Director Geo. T. Jester, it is suggested that he assume this indebtedness.

Overdue paper is reported amounting to $59,106.86. Such of this overdue paper as is good should be collected or renewed with satisfactory security for payment.

The following balances are due from closed banks.

	National Bank of Commerce, Kansas City, Mo.	$1,884.29
111	Western Bank & Trust Co., Dallas, Texas	566.16
	Total	$2,450.45

These balances should be transferred to the account of "bonds", securities, claims, etc." until settlement is made and any loss sustained on them promptly charged off the books as soon as actually determined.

Overdrafts are reported amounting to $157,874.12, a large proportion of which are unsecured. This class of accommodations appear to be habitually and undiscriminately granted and amounted to over 32% of the deposits subject to check on the day of the examination. All overdrafts should be collected as soon as possible and the objectionable practice of granting accommodations in this form should be discontinued. In a recent decision by the Supreme Court of the State of New York it was held that the practice of granting overdrafts could not be supported by any vote of the directors, however formal, and when overdrafts were permitted by an officer of the bank he did so at his own peril, and upon the responsibility of himself and his sureties.

Renewed efforts should be made to dispose of the real estate taken for debt in 1897 and 1902 as this property had been held for some time beyond the limit prescribed by Section 5137, U. S. R. S. as you have been advised heretofore.

No dividend can lawfully be declared until all undesirable and doubtful have been eliminated, all losses deter-

mined and charged off and such dividend warranted by future earnings.

It is noted that a portion of the excessive loans consist of Cotton overdrafts. When it becomes necessary for a national bank to make advances of money against shipments of cotton, the enclosed circular clearly sets forth the manner in which such advances may be made.

It is reported that the assistant teller reconciles bank balances. You are again admonished that reconcilements of accounts with correspondent banks
112 made by one officer or employe of the bank should be verified by another in order that errors and discrepancies may be detected. Pass books should be compared by some one other than the person who balances them.

The records of the monthly meetings of the directors should show what action is taken on each application for a loan. An active examining committee should be appointed to make an examination of the bank's affairs at irregular intervals at least twice a year.

The directors are required to unite in making a prompt reply, in detail, to this letter, over their individual signatures, stating they have read the letter and what steps will be taken to correct the matters called to their attention herein. The directors should sign the last page of the detailed reply and not a separate sheet attached thereto.

Respectfully,

T. P. KANE,
Deputy Comptroller.

EXHIBIT "D".

C. W. Jester, President. S. W. Johnson, Vice-President.
Geo. E. Jester, Cashier. A. G. Elliott, Asst. Cashier.

Corsicana National Bank,
Capital $100,000.
Surplus and Profits $150,000.

Corsicana, Texas, March 11th, 1908.

Comptroller of Currency,
Washington, D. C.

Dear Sir:

We have your favor addressed to the President of the Corsicana National Bank, and have carefully read and considered same. It shall be our endeavor to reply seriatim to each of the points raised.

You estimate losses to this bank as follows:

	Corsicana Cotton Mills	$42,000.00
113	Fleming & Templeton	30,000.00
	Schwarts & Company	16,500.00
	J. K. Lotspeich & Co.	2,000.00

Reference to the Fleming & Templeton item of $30,000.00 we beg to say that this item has been disposed of by the bank and they now owe us nothing.

Reference to the Schwarts & Company item of $16,500.00 loss, we beg to say that we have charged to profit and loss $16,000.00 of this amount and feel that the balance which they owe is is fully secured.

Reference to the $2,000.00 loss of J. K. Lotspeich & Company, we beg to say that we have charged to profit and loss $3,000.00.

Now referring particularly to estimated loss of $42,000.00 on the account of the Corsicana Cotton Mills we beg to say —That this is the only account which now stands on our books as an excessive loan and we are of the opinion that no loss will be sustained by this bank on that account.

We think it proper to enclose you herewith a financial statement rendered by this concern to us of date Feb. 29th, 1908, which fully sets out its financial condition. We believe a conservative estimate of the value of the quick assets of this concern, consisting of cotton products and the like, will, when sold, amount to at least $80,000.00. This concern owes about $150,000.00. Its plant is in excellent state of repairs, modern and fully insured. It has cost about $150,000.00 and ought under the most extreme conditions to bring not less than $90,000.00 to $100,000.00. Besides, this plant can be and has been operated profitably.

The products have been and are being disposed of with the greatest facility practicable.

Before the end of this year we hope to be able to
114 report that this concern's indebtedness will have been covered without any loss to this bank.

And in this connection we beg to respectfully say it will be the policy of this bank in the future to fully comply with your rules with reference to excessive loans, both as to this concern as well as to all others.

We observe your comments reference to the "bills of exchange system" in handling cotton accounts and it will be our policy in the future to use our best efforts to strictly comply therewith.

Reference to the bonds and stocks of the Western Texas Compress Company and Oil City Compress Company, we have to say that we feel that the examiner is in error in assuming that these could not be sold at any price.

Both of these plants are running and have been throughout this season, and it is believed by us that the market value of these stocks and bonds is in excess of the amount for which we carry them on our books.

But let us further say, when the time is more opportune than now it will be our policy to sell them, especially that of the Western Texas Compress Company.

Reference to the loan to C. A. Benton. We beg to report that it has been reduced within the limit. This loan is amply secured and we do not believe this bank will sustain any loss thereon.

Reference to the E. W. Caldwell et al loan. This loan has been reduced from $21,000.00 in the beginning to $8,940.75 and this latter is not yet due. We have every reason to believe that this debt will be fully paid off when due and further, this loan is amply secured.

Reference to the loan to Claude W. Jester, amounting to $2,900.00, we beg to say that so soon as it is determined what the loss will be, we will charge it off.

Reference to your strictures concerning past due paper we beg to say that we have purposely suffered a portion of this same to remain past due rather than to take renewals. Since the examiner was here this class of paper has been considerably reduced, and we are pur-
115 suing the policy of pushing collections as fast as possible.

We hope you appreciate the policy we are pursuing in this respect and that we have to use discretion in the matter of forcing collections.

As suggested the balances due from the Western Bank & Trust Company, of Dallas, and the National Bank of Commerce, Kansas City, have been referred to the account of Bonds, Securities, Etc., and we will charge off losses sustained, if any, when finally determined.

Our total overdrafts at this writing are $53,458.03, of which $43,000.00 is for cotton products to secure such. These can be quickly converted into cash.

Reference to reconcilement of bank balances. The Assistant Teller reconciles these, but the Assistant Cashier verifies and signs the reconcilement sheets.

As to the Finance Committee suggested One has been appointed consisting of three of our members, who are to meet twice a year, or oftener, if necessary, and report to the board of directors. A copy of this report shall be spread upon the minutes of our association.

As to our Bill payable of $60,000.00. This will not be due until the 16th inst., at which time it will be reduced to $30,000.00, and within next thirty or sixty days fully paid.

Reference to the matter of overdrafts we beg to say that it will be the policy of this bank to discourage them as far as practicable and we believe that we will in the future

be the subject of decidedly less criticism then we have been in the past.

Now, in conclusion, we beg to assure you that it is our earnest desire to comply fully with your rules and the National Banking Law, and we would respectfully ask that you do us the kindness to reply to this letter and state wherein we have failed in anywise to meet your demands as disclosed in your letter, to which this is a reply.

Yours truly,

J. M. BARTLETT C. W. JESTER
C. L. JESTER C. R. TERRY
116 F. P. KERR E. W. JOHNSON
GEO. T. JESTER S. W. JOHNSON
A. M. MILLIGAN.

EXHIBIT "E"

McKie & Autry
W. J. McKie. Jas. L. Autry.
Attorneys & Counsellors.
Civil Practice Only.

Corsicana, Texas, May 11th, 1907.

Dr. S. W. Johnson and Mr. C. W. Jester,
City,

Gentlemen:

I beg to hand you herewith certified copy of the charter of Corsicana National Land & Loan Company. I have also drawn a skeleton sketch for your assistance of your first meeting, with suggestions for your by-laws. You will of course add to or change these by-laws either at your first meeting or at subsequent meetings, to make them conform to your wishes and necessities in business. The main point you want to cover in the by-laws is to define the authority the Directors will give to the particular executive officers. As you both know, the general control of corporations is in the hands of their boards of directors. General authority can be given to certain executive officers through the by-laws or by separate resolutions of the Directors, when occasion may require.

I suggest that you let me know what your final wishes are in regard to the trust agreement. I think this should be decided on before you have your stock certificates printed.

Another point: I made no mention in the minutes prepared for you of whether or not the stock of the Company is or will all be paid up. Whatever you want done in this direction, you can provide for in the minutes; that is, if all of the stock is to be issued and paid for, you will so recite; or if only a part of it is to be called you
117 will so state.

The new Company has my best wishes. Please command me if I can serve you further. I remain,

Very truly,

Dictated. W. J. McKIE.

EXHIBIT "F".

Corsicana, Texas, April 8th, 1907.

We, the undersigned, agree to take and pay out for (out of a special dividend to be declared by the directors of the Corsicana National Bank) the number of shares set opposite our names, of the par value of $50.00 each, of the proposed Corsicana National Land & Loan Company, to be capitalized at $50,000.00. No subscription to be binding until the full amount of the Capital Stock is subscribed for.

Said subscription is to be paid upon demand to C. W. Jester, Trustee.

Name	Shrs.	Name	Shrs.
Geo. T. Jester	25	Mrs. Joel A. Kerr	38
C. L. Jester	27	R. R. Kerr	10
W. A. Polk, Jr	25	Homer B. Jester	20
Travis Holland	35	C. R. Terry	2
C. W. Lester	117	W. W. Loop	5
E. W. Johnson	10	Mrs. J. A. McGee	10
J. M. Bartlett	30	Mrs. W. D. Haynie	45

118 Name	Shrs.	Name	Shrs.
T. P. Kerr	20	Mrs. M. K. Lotspeich	3
S. W. Johnson	227	J. G. Trimble	25
Clay Johnson	50	T. A. Cheems	13
A. G. Elliott	17	T. & L. Cerf	20
H. C. Jester	3	Mrs. C. M. Castles	15
Geo. E. Jester	10	Mrs. J. W. Edens	20
L. Cerf.	45	Mrs. A. V. Harris	5
E. Raphael	10	J. B. Haynie	10
Mrs. L. H. Newburgh	10	Mrs. Fannie Lotspeich	5
Kal Schwartz	25	Louis R. Robbins	3
Jos. Schwartz	15		

EXHIBIT "G".

Exhibit "G" is a copy of the charter of Corsicana National Land & Loan Company, of which the incorporators were:

S. W. Johnson, C. W. Jester, and E. W. Johnson.

The purpose of the corporation is accumulation and loan of money. The first board of directors are: C. W. Jester, S. W. Johnson, J. M. Bartlett, E. W. Johnson, C. L. Jester, Geo. T. Jester, T. P. Kerr, W. A. Polk, Jr., Travis Holland.

Capital stock: $50,000.00;

And which was filed in the office of the Secretary of State on the 3rd day of May, 1907.

EXHIBIT "H".

C. W. Jester, Pres. Geo. E. Jester, Cashier.
S. W. Johnson, V-President. A. G. Elliott, Asst. Cash.

The Corsicana National Bank.
Capital $100,000.
Surplus and Profits $175,000.

Corsicana, Texas, June 10, 1907.

Mr. E. A. Templeton,
Dallas, Texas.

Dear Sir:

We are in receipt of the last two notes sent us for $15,000.00 each, signed by yourself and Fred Fleming, maturing six months from this date.

We have deducted the discount, $900.00, and
119 hand you herewith our draft *A7830, on Western Bank & Trust Co., order Fleming & Templeton, for $29,100.00.

Also, return herewith the first two notes forwarded us for $15,000.00 each, signed by yourself and Mr. Fleming, due one year from date, the notes above mentioned taking place of these.

Trusting that this will close the matter to your entire satisfaction, and with kind regards, I am,

Yours very truly;

V. P.

EXHIBIT "J".

Western Bank and Trust Company.
Capital Half Million Dollars.

Fred Fleming, President D. A. Templeton, Active V. P.
W. M. Robinson, Vice-Pres. W. C. Witwer, Cashier.
A. J. Elliott, Asst. Cashier Ira J. Kerr, Asst. Cashier.
F. W. Smith, Asst. Cashier.

Dallas, Texas, June 7, 1907.

Dr. S. W. Johnson, Vice-Pres.,
Corsicana National Bank.
Corsicana, Texas.

Dear Sir:

I have delayed acknowledging receipt of your favor of May 31st awaiting Mr. Fleming's return from his Ranch, where he has been for several days.

Enclosed find note of Fred Fleming with D. A. Templeton as surety, for $15,000.00 dated June 10, 1907, and due one year after date. Also note of D. A. Templeton with Fred Fleming as surety, for like amount and maturity. Kindly discount these notes as agreed and oblige.

We appreciate the manner in which you have taken over our business at Corsicana, and believe that your bank will profit by the transaction. Please feel assured
120 that the Western Bank & Trust Company will stand ready at all times to favor your good Bank, or any of its officers, in every way possible.

With best wishes.

Yours very truly,

DAT-LB-enc. D. A. TEMPLETON.

EXHIBIT "J".

Western Bank & Trust Company.
Capital Half Million Dollars.

Fred Fleming, President D. A. Templeton, Active V-P
W. M. Robinson, Vice-Pres. W. C. Witwer, Cashier
A. J. Elliott, Asst. Cashier Ira J. Kerr, Asst. Cashier
F. W. Smith, Asst. Cashier Ose Goodwin, Active V-P.

Dallas, Texas, Dec. 3rd, 1907.

Dr. S. W. Johnson, Vice-Pres.,
Corsicana National Bank,
Corsicana, Texas.

Dear Sir:

Referring to the notes of Fleming & Templeton which will mature December 10th, will you kindly forward six months renewal notes for these, in accordance with our understanding, and we will arrange to meet them on or before their maturity.

Yours very truly,
D. A. TEMPLETON.

EXHIBIT "K".

Western Bank and Trust Company,
Capital Half Million Dollars.

Fred Fleming, President D. A. Templeton, Active V-P.
W. M. Robinson, Vice-Pres. W. C. Witwer, Cashier.
A. J. Elliott, Asst. Cashier Ira J. Kerr, Asst. Cashier.
F. W. Smith, Asst. Cashier. Osee Goodwin, Active V-P.

121 Dallas, Texas, Dec. 7th, 1907.

Dr. S. W. Johnson, Vice-Pres.
Corsicana National Bank,
Corsicana, Texas.

Dear Mr. Johnson:

Replying to yours of December 4th, have to say that, after talking with Mr. Fleming, we think we are correct

in stating to you that there is no material change in our financial responsibility as it existed at the time our notes were given to you, except as might be considered due to the general situation as affecting values temporarily.

The guarantee executed by directors of this bank, which you doubtless have seen published, does not in any way effect our personal obligations previously made. The issue of the statement has caused a very marked improvement in the feeling of the public here with reference to this institution and our situation is now gradually improving and we think that the Bank stands much stronger in this city than it has ever stood in the past, of which we feel very much gratified.

I am leaving tonight for New York, expecting to return in eight or ten days, at which time I will no doubt find your renewal notes here, and will give them my prompt attention.

Yours very truly,
D. A. TEMPLETON.

EXHIBIT "L".

Western Bank and Trust Company,
Capital Half Million Dollars.

Fred Fleming, President	D. A. Templeton, Active V-P
W. M. Robinson, Vice-Pres.	W. C. Witwer, Cashier
A. J. Elliott, Asst. Cash.	Ira J. Kerr, Asst. Cashier.
F. W. Smith, Asst. Cashier	Osce Goodwin, Active V-P.

Dallas, Texas, Dec. 19th, 1907.

Dr. S. W. Johnston, Vice Pres.
Corsicana National Bank,
Corsicana, Texas.

Dr. S. W. Johnson:

Upon my return to the office this morning,
122 after an absence of ten days, I find your very kind letter of the 12th, inst, enclosing renewal notes which have been duly signed by Mr. Fleming and myself,

and are returned to you herewith. You will please mark the old notes "Paid by renewals" and attach them to the notes which are enclosed. Charge the discount on these notes to the Western Bank & Trust Company and advise us so that we can make the proper entries here.

I am glad to report that my trip East was quite as satisfactory as I could have wished and that matters with us are now gradually resuming a normal condition.

With all good wishes, I remain,

Yours very truly.

D. A. TEMPLETON,
Vice-President.

DAT-LB-encs.

EXHIBIT "M".

Dec. 4, 1907.

Mr. D. A. Templeton,
Dallas, Texas.

Dear Allie:

Before forwarding renewal notes of loan to you and Mr. Fleming we must ask you to inform us as to the change in yours and his financial responsibility since the making of these notes and if the change, if any, should operate against us can you secure us?

Yours Truly,

V. P.

EXHIBIT "N".

Mr. D. A. Templeton,
Western Bank & Trust Co.,
Dallas, Texas.

Dear Sir:

We have your favor of the 19th inst. enclosing renewal notes and are charging Western Bank & Trust Company with $900.00 to cover interest on same from
123 December 10, 1907, to June 10, 1908, at 6%.

The notes which matured on 10th inst., have been marked "paid by renewal" and will be held with new notes.

We are glad to know that you feel encouraged and hope that conditions will continue to improve.

Yours truly,

V. P

EXHIBIT "O".

Dec. 12, 1907.

Mr. D. A. Templeton,
Dallas, Texas.

Dear Sir:

With the facts as stated by you in your favor of the 7th inst., and made to us verbally by Mr. Fleming, we shall take pleasure in extending your notes for six months and hand you herewith renewal notes, dated Dec. 10th, due June 10th, 1908.

Please sign one as principal and one as surety and have Mr. Fleming do likewise and return to us with the statement that they are renewals; also, we would like to mark the old notes "paid by renewals and let them remain attached to one herewith.

It is needless for us to say that you have our very best wishes, for you know we wish you the very best of good luck.

Yours truly,

.....
Vice-President.

EXHIBIT "P".

$15,000.00 Corsicana, Texas, June 10th, 1907.

Six months after date, I, we, or either of us promised to pay to the order of The Corsicana National Bank, of Corsicana, Texas, fifteen thousand dollars, at its office, in Corsicana, Texas, for value received with interest at the rate of ten per cent per annum from maturity until paid. And it is hereby specially agreed, that if this Note

is not paid at maturity and is placed in the hands of an attorney for collection or is sued upon we promise to pay ten per cent additional, on the full amount due for attorneys fees. We hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and diligence in bringing suit againt any party hereto, and each party signing this note consents that time of payment may be extended without notice.

(Signed) D. A. TEMPLETON.
(Signed) FRED FLEMING.

No. A. 2561 Due Dec. 10, 07. P. O.

Indorsed on back of above note is the following cancelled indorsement:

[Stamped]: Corsicana National Bank. Paid by Renewal. Corsicana, Texas.

125 EXHIBIT "Q".

$15000.00 Corsicana, Texas, June 10th, 1907.

Six months after date I, we or either of us promise to pay to the order of The Corsicana National Bank, of Corsicana, Texas, fifteen thousand dollars at its office in Corsicana, Texas, for value received with interest at the rate of ten per cent per annum from maturity until paid.

And it is hereby specially agreed that if this note is not paid at maturity, and is placed in the hands of an attorney for collection or is sued upon We promise to pay ten per cent, additional on the full amount due for attorneys fees. We hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and diligence in bringing this suit against any party hereto, and each party signing this note consents that time of payment may be extended without notice.

(Signed) FRED FLEMING,
(Signed) D. A. TEMPLETON.

No. A 2560 Due Dec. 10, '07. P. O. ....

[Stamped] Corsicana National Bank, Paid By Renewal. Corsicana, Texas.

126 EXHIBIT "R".

Exhibit A.

$15,000.00 Corsicana, Texas, Dec. 10, 1907-190__

June 10th, 1908, after date, I, we, or either of us promise to pay to the order of The Corsicana National Bank, of Corsicana, Texas, fifteen thousand ($15,000 00) dollars, at its office in Corsicana, Texas, for value received with interest at the rate of ten per cent per annum from maturity until paid.

And it is hereby specially agreed, that if this Note is not paid at maturity and is placed in the hands of an attorney for collection or is sued upon We promise to pay ten per cent. additional, on the full amount due for attorneys fees. We hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and diligence in bringing suit against any party hereto, and each party signing this note consents that time of payment may be extended without notice.

(Signed) D. A. TEMPLETON,
(Signed) FRED FLEMING.

No. A3157 Due June 10, '08 P. O.

Renewal and extension attached note.

Indorsed on the above note on the back are the following:

Pay to the order of Seaboard National Bank, New York, N. Y., Corsicana National Bank, of Corsicana, Tex.
Without recourse Corsicana National Bank, by C. W. Jester, President.
Pay to the order of Corsicana National Bank, without recourse. Corsicana National Land & Loan Co. By W. M. Huggins, President.

127 EXHIBIT "S".

Exhibit B.

$15,000.00 Corsicana, Texas, Dec. 10th, 1907-190

June 10th, 1908 after date I, we or either of us promise to pay to the order of The Corsicana National Bank, of Corsicana, Tex. Fifteen thousand ($15,000.00) dollars at its office in Corsicana, Texas, for value received with interest at the rate of ten per cent per annum from maturity until paid.

And it is hereby specially agreed, that if this Note is not paid at maturity and is placed in the hands of an attorney for collection or is sued upon We promise to pay ten per cent. additional, on the full amount die [due] for attorneys fees. We hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and diligence in bringing suit against any party hereto, and each party signing this note consents that time of payment may be extended without notice.

(Signed) FRED FLEMING.
(Signed) D. A. TEMPLETON.

No. A3158 Due Jun. 10, 1908.

Renewal and extension. Attached note.

On the back of above note are the following indorsements:

Without recourse, Corsicana National Bank, By C. W. Jester, President.

Pay to the Order of Corsicana National Bank without recourse Corsicana National Land Co. By W. M. Huggins President.

128 EXHIBIT "T".

No. A7830.

Corsicana National Bank,
Corsicana, Texas, June 10, 1907.

Pay to the order of Fleming & Templeton, $29100.00
Twenty nine thousand one hundred .....Dollars.

To Western Bank & Trust Co., Dallas, Texas. A. G. Elliott, Asst. Cashier.

On the back of above draft is indorsed Fleming & Templeton, and across the face of it is perforated.

129 EXHIBIT "U".

Exhibit U is an agreement between certain unsecured creditors of Fred Fleming, Bankrupt, of date day of February, 1909, whose estate was then being administered in bankruptcy in the District Court of the United States for the Northern District of Texas at Dallas, which recites, amongst other things, that the Corsicana National Land Loan Company was an unsecured creditor whose claim had been proven and allowed against the said Fred Fleming, Bankrupt, to the amount of $30,000 amongst other things and provides for the liquidation of the Fleming Ranch & Cattle Company for the benefit of the unsecured creditors of Fred Fleming and in which liquidation the Corsicana National Land Loan Company was to participate on the basis of its $30,000 claim and the agreement was executed on behalf of the Corsicana Land Loan Company by Samuel Wistar Johnson as its Vice-President.

130 EXHIBIT "V".

Fleming & Templeton, Bankers.
Corsicana, Texas.

Corsicana, May 31st, 1907.

On account of our large interests in Dallas and our removal to that city, making it impossible to give our personal attention to our business at Corsicana, we have decided to discontinue our office here after this date.

According to our books you have $..... to your credit, which amount we have taken the liberty to turn over to the Corsicana National Bank and it has been placed to your credit on their books, which action on our

part we trust will meet with your approval and that it will suit you to continue the account with them, knowing that you will receive most courteous and appreciative treatment at their hands.

If the above amount does not agree with your books, kindly take your pass book to the Corsicana National, to be balanced, and if there is an error it will be corrected.

We take this occasion to thank you most sincerely for your patronage and to extend to you our best wishes for the future.

If there is anything about your business with us or regarding your account that you do not understand, please call on or write Mr. Harold Talley, or Mr. W.H. Dunn at our present office, and either of them will be glad to explain it to you.

Yours very truly,

FLEMING & TEMPLETON,

By HAROLD TALLEY, Cashier.

131 EXHIBIT "W".

Exhibit W is a deed of trust executed by Fred Fleming, D. A. Templeton, M. P. Exline, Bennett Hill, and W. L. Noble by which Fred Fleming and D. A. Templeton conveyed to Bennett Hill and William Doran as trustee all of their property, real and personal, not exempt from execution, for the purpose of securing the depositors in the Western Bank & Trust Company. This instrument is dated November 28th, 1907.

132 EXHIBIT "X".

S-3645-R.

Treasury Department.
Washington.

June 22, 1908.

The Board of Directors,
The Corsicana National Bank,
Corsicana, Texas.

Sirs:

The report of an examination of your bank made on the 3rd inst. has been received and has had careful consideration.

The loan to the Corsicana Cotton Mills amounted to $81,281.79 at the time of the examination last February, of which $39,281.79 was in the form of an overdraft. This overdraft has now been taken up by including it in an unsecured demand note for $40,000, while the $42,000 unsecured demand note which, in February, constituted the balance of the loan, has been reduced to $28,000 by the collection of $14,000, the entire indebtedness now amounting to $68,000. This loan is not only far in excess of the limit prescribed by Section 5200, U. S. R. S., but it is slow and extremely undesirable and practically uncollectible except in part. It is reported that efforts are being made to dispose of the company's liquid assets and to use the proceeds to reduce the loan, and that if this is done the indebtedness will be about $40,000, which amount will be unsecured and will represent funds invested in the plant itself. While the plant is said to have considerable value, the bank can not get its money out of it, nor is it in a position to take over the property. The $40,000 is worthless as an active asset of the bank and must be taken up by the directors who are responsible for making this excessive loan in the first instance. As heretofore advised, when directors authorize or permit Loans to be made in violation of law, they are individually liable under Section 5239, U. S. R. S., for any damages which the bank or any person may sustain in consequence of their

133 action. This loan, being largely excessive, must be brought within the legal limit without delay, which limit is $20,000., assuming the surplus to be unimpaired, and you are again admonished that the limitations of law in respect to loans must be observed by your association, and will be enforced by application of the penalty provided by Section 5239, U. S. R. S., if persistently disregarded. Please state what will be done in this connection.

Other losses are estimated as follows and should be charged off:

Past due paper		
T. P. Bowman	$ 110 95	
W. M. Huggins	53 30	
Claude W. Jester	2,880 00	$3,044 25
Overdrafts		
Schwartz & Co	562 93	
Gusoni & Co.	17 83	
Lotspeich & Co	4,000 00	
		$4,580 76
Bonds, Securities, etc.		
The S. M. Jones Co.	1,515 00	
Western Bank & Trust Co.	566 16	$2,081 16
		$9,706 17

It is again suggested that Director Jester take up the $2,880.00 loan to his son, Claude W. Jester, which is included with the losses.

The loans to C. A. Benton, $18,640.00, and E. W. Caldwell, $8,940.75, which are secured by real estate, are not regarded as desirable assets as the borrowers are reported to have only limited financial strength, and there are prior liens on the realty. They should be disposed of and continued efforts should also be made to eliminate some or all of the other loans secured by real estate.

Special attention is again called to the bonds of the Western Texas Compress Co., and the Oil City Compress

Co., carried on the books at $14,552.13, and $25,837.50, respectively. While it was represented to the examiner that these bonds are worth more than
134 the amounts at which they are carried, they are slow and undesirable assets and should be disposed of. According to the examiner Vice-President Johnson is willing to purchase the Western Texas Compress Co. bonds for $30,000.00 and it is recommended that they be sold to him as soon as convenient. The funds invested in these securities could be used to better advantage in other channels.

Past due paper is shown amounting to $48,282.07. This classification embraces the $6,000.00 unsecured note of the First National Bank of Wortham, Texas, and the long past due notes of W. H. Staley, aggregating $10,000.00 which should have immediate attention. In the latter instance the sureties should be required to pay if the amount can not be collected from the maker of the paper.

While there has been a great improvement in the matter of overdrafts, accommodations are still being granted extensively in this form. You are again admonished that the practice of granting overdrafts should be discontinued.

The directors and officers should continue to exert every effort to improve the assets by eliminating the slow undesirable and worthless items and to place the association in first class shape.

The directors are requested to unite in making a prompt reply in detail to this letter over their individual signatures, stating it has been read by them, and what steps will be taken to correct the matters called to their attention herein.

Respectfully,

T. P. KANE,

Deputy and Acting Comptroller.

135 EXHIBIT "Y".

Form 1980. Ed. Mar. 28-08-1,000. Copy.

Certificate of Copy.

Treasury Department
Office of the
Comptroller of the Currency. ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, T. P. Kane, Deputy and Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter dated June 29, 1908, received from the Corsicana National Bank, Corsicana, Texas, and of the whole of such original on file and of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 16th day of February, A. D. 1910.

T. P. KANE,
(Seal) Deputy and Acting Comptroller of the Currency.

136 EXHIBIT "Y".

C. W. Jester, President George E. Jester, Cashier.
S. W. Johnson, Vice-President A. G. Elliott, Asst-Cashier.
Corsicana National Bank.
Capital $100,000.00.
Surplus and Profits $150,000.00.

Corsicana, Texas, June 29th, 1908.

Comptroller of Currency,
Washington, D. C.

Dear Sir:

Replying to your favor of the 22nd inst., beg to say we have read the letter in full and contents have been carefully noted.

We have charged to profit and loss the past due notes of T. B. Bonner, et al., W. M. Huggins and Claude W. Jester, aggregating $3044.25.

We have charged to profit and loss the overdrafts of Gussoni & Company and J. K. Lotspeich & Co., and if the Schwartz & Company overdraft is not paid within a short time we will dispose of it in a like manner, however, we have good assurance that it will be paid.

The claim of $566.16 against Western Bank & Trust Company has been charged to profit and loss.

Regarding the S. M. Jones Company stock, we beg to suggest: We are advised by Toledo, Ohio banks (headquarters of S. M. Jones Co.) that the stock should bring eighty five cents on the dollar and we offered it to the President of the Company at that price. He informed us just at this time he did not care to purchase, but the stock was worth the money etc. We carry the stock for only 79 cents and feel sure it is worth the money, though it may take a little time to dispose of it.

The C. A. Benton and E. W. Caldwell loans shall have our close attention. We feel quite sure that with six months all of the Caldwell loan will be paid.

137 The $6,000.00 past due notes of First National Bank of Wortham have been disposed of, that bank now being indebted to us in the sum of $3,000.00, which is represented by a note due Oct. 1st, 1908, amply secured.

The Staley notes are having our close attention. Suit has been brought and property conservatively valued at $50,000.00, levied upon, and when this security exhausted the endorser informs us he is ready to pay whatever discrepancy should remain.

Regarding Compress Bonds. We are now negotiating with responsible compress people and are very hopeful that a sale of the Western Texas Compress Company bonds will be consummated at a much better figure than carried for by us; therefore, we think best to not sell for $30,000.00, to Vice-President, Johnson, at present.

We note fully your comments on the indebtedness of the Corsicana Cotton Mills to the bank and in reply will say:

The owners of the mill have issued first mortgage bonds upon this plant with the view of hypothecating them for a sum sufficient to pay off the debt of the mill. This they hope to be able to do within the next thirty to sixty days.

In case they fail in this then we will arrange, if possible, to have the ownership of the plant transferred, either on the lines laid out by you or some other way that will be satisfactory to the Department, and we believe the Bank will sustain no loss from this source.

Yours truly,

C. F. JESTER
C. L. JESTER.
E. R. TERRY
A. M. MILLIGAN
S. W. JOHNSON,
J. M. BARTLETT
E. W. JOHNSON
GEO. T. JESTER
F. P. KERR.

138 EXHIBIT "Z".

C. W. Jester, President Geo. E. Jester, Cashier.
S. W. Johnson, Vice-President A. G. Elliott, Ass't. Cashier

Corsicana National Bank,
Capital $100,000.00.
Surplus and Profits $150,000.00.

Corsicana, Texas, July 9, 1907.

Mr. F. A. Templeton, V. P.
Western Bank & Trust Co.,
Dallas, Texas.

Dear Sir:

I will be in the market for a loan of about ten thousand dollars in a few days and thought perhaps you might have some idle funds awaiting good investments.

If you would like to make me the loan for six months or longer, at rate of 6%, on my note with Corsicana National Bank stock and Corsicana National Land & Loan Company stock as collateral, please let me know.

Yours truly,

(Signed) S. W. JOHNSON.

EXHIBIT "A-1".

C. W. Jester, President — Geo. E. Jester,
W. D. Hanie, Vice President — A. G. Elliott,
S. W. Johnson, Cashier — Asst. Cashiers.
The Corsicana National Bank,
Capital $100,000.00.
Surplus and Profits $150,000.00.

Corsicana, Texas.

Dear Fred:

I want to thank you for the offer to lend me the $10,000.00. I offered it to you thinking you might have a surplus of money and that it might be a favor to your bank to get the loan. I have made other arrange-
139 ments, but this does not lessen my appreciation of your kindness.

With best wishes for you and yours,

Sincerely,

(Signed) S. W. JOHNSON.

EXHIBIT "B-1"

C. W. Jester, Prest. — Geo E. Jester, Cashier.
S. W. Johnson, V-Prest. — A. G. Elliott, Ass't. Cashier
The Corsicana National Bank,
Capital $100,000.00
Surplus and Profits $175,000.00.

Corsicana, Texas, May 31st, 1907.

Mr. D. A. Templeton,
Vice-Pres.
Western Bank & Trust Co.,
Dallas.

Dear Sir:

Replying to your favor of the 29th inst., Mr. Tally has handed us list of your depositors and drafts on your bank for the amounts, which drafts have been mailed you for our credit in due course.

You will notice that several of your depositors have drawn for "savings accounts" and in this connection beg to say that, in each instance we have advised them to remain with you and only after their determined threats to move to one of the other Corsicana banks we have taken them. Some have taken the advice and remained with you.

Your depositors whom we have seen without exception express regret that you are retiring and speak only kind words for you, promising that they will perhaps remain with us if we will give them as good treatment as you did.

I wish to thank you for your kindness and we will use our best efforts to take good care of your old friends.

With kind personal regards,

140 Yours very truly,

(Signed) S. W. JOHNSON, Vice-Pres't.

EXHIBIT "C-1"

Is a credit slip of Western Bank & Trust Company, reading as follows: "Credit Fleming & Templeton, Corsicana, date of your letter, Deposit $29,100.00 June 12, 1907, June 11, 1907."

EXHIBIT "D-1".

Is another credit slip of Western Bank & Trust Company, reading as follows: "Credit Corsicana National Bank, Corsicana, Texas, date of your letter, by F. & T. $900.00", stamped across the face as follows: "Western Bank & Trust Company, paid Dec. 24, 1907, Collin, Teller, Dallas, Texas."

EXHIBIT "E-1".

Is a charge slip of Western Bank & Trust Company reading as follows: "Charge Fleming & Templeton, Cr. Corsicana Nat. Bank $900.00 O. K. F., Dec. 22, 1907, stamped "Paid 12-24-07."

EXHIBIT "F-1".

State of Texas,
County of Dallas.

This agreement this day made and entered into by and between Fred Fleming and D. A. Templeton of said county and state.

Witnesseth, That, whereas, heretofore on or about the 6th day of July, 1907, the said parties doing business under the firm name of Fleming & Templeton were indebted to the Western Bank & Trust Company in the following sums, to-wit: One overdraft upon the said bank of $140,000.00, one overdraft upon the said bank of $45,500.00, one overdraft of $25,000.00 arising from the payment of that sum by the bank to the Phenix National Bank, New York, for the account of Fleming & Templeton, one overdraft of $30,000.00 upon the said Western Bank & Trust Company arising by the payment of the said bank to the Bank of America in New York for the account of Fleming & Templeton and $2,500.00 over-
141 draft arising from a purchase on the account of said Fleming & Templeton of stock in the said Western Bank & Trust Company as follows: Five (5) shares from Bennett Hill, ten (10) shares from A. M. Milligan and ten (10) shares from B. M. Burgher. The whole amount of the indebtedness of the said firm of Fleming & Templeton to the said bank at said date amounting to the sum of two hundred forty three thousand ($243,000.00) dollars.

And whereas, at or about said date the said Fleming was the owner of eleven hundred (1100) shares in the said Western Bank & Trust Company, of the par value of one hundred ten thousand ($110,000.00) dollars and the said Templeton was the owner of a like amount, and the said firm of Fleming & Templeton was the owner of three hundred sixty five (365) shares in said bank of the par value of $36,500.00.

And, whereas, the said Templeton agreed with the said Fleming to purchase the shares of the said Fleming and also his interest in the shares owned by Fleming &

Templeton, said Fleming to be paid par value of the said shares by the said Templeton by the assumption by the said Templeton of the liability of the said Fleming to pay to the said Western Bank & Trust Company said indebtedness of the firm of Fleming & Templeton aggregating $243,000.00.

Exhibit "F-1" Continued.

And, whereas, the said indebtedness has not been paid to the said bank except as hereinafter set forth, and the said Templeton has not therefore carried out in full his agreement to assume the discharge of the indebtedness to the said bank in so far as the said Fleming is concerned.

And, whereas, the said Fleming on or about July 6th, 1907, transferred and assigned to the said Fleming all of the stock owned by him in the said bank individually and his interest in the stock in the name of the firm of Fleming & Templeton, but the said sale and transfer and the agreements made between the said parties hereto concerning same remain otherwise incomplete.

142 And whereas, the said Templeton out of the stock owned by him, the stock purchased from the said Fleming and the stock of Fleming & Templeton purchased by the said Templeton has sold to sundry persons five hundred (500) shares of the stock of said bank for the sum of fifty thousand ($50,000.00) dollars for the purchase price of which the said persons have respectively executed their notes with the stock attached as collateral to the Western Bank & Trust Company.

And, whereas, one hundred thirty (130) shares out of the stock have been sold by the said Templeton to other persons, to-wit: Joe C. Thompson, fifty shares; W. J. Neale, fifty shares; and S. Y. Matthews, thirty shares; and the said three named persons have also executed their notes to the Western Bank & Trust Company for the par value of the stock sold them respectively.

Now, therefore, for the purpose of consummating the said sale and assignment of stock between the said Fleming and the said Templeton and to carry into effect their re-

spective agreements concerning the same and for the purpose of properly and definitely evidencing the indebtedness of the said firm of Fleming & Templeton to the said Western Bank & Trust Company and to place the evidence of said indebtedness in proper and definite shape and for other good considerations moving the parties hereto, it is hereby agreed between the said parties as follows, to-wit:

First. The said Templeton does hereby transfer and assign to the said Fleming absolutely two hundred fifty (250) shares of the capital stock of the Western Bank & Trust Company for the consideration of twenty-five thousand ($25,000.00) dollars, which sum shall be paid to the Western Bank & Trust Company by the note of the said Fleming of even date herewith payable on the 7th day of Dec., 1908, with interest at the rate of six per cent per annum from date. The execution of the said note of the said Fleming to the said Bank to operate as a credit upon the indebtedness of Fleming & Templeton to the said Bank above mentioned.

143 Second. The said Templeton shall execute his note of even date herewith to the Western Bank & Trust Company for the sum of fifty thousand ($50,000.00) dollars payable on the 7th day of Dec., 1908, and bearing interest from date at the rate of six per cent per annum, which note shall be indorsed and guaranteed by the said Fleming, and shall operate as a credit on the said indebtedness of Fleming and Templeton to the said Bank.

Third. The said Templeton having already executed to the Western Bank & Trust Company his three notes aggregating the principal sum of about one hundred two thousand ($102,000.00) dollars, which notes were executed by the said Templeton to the said Bank for the purpose of settling a part of the said indebtedness of the firm of Fleming & Templeton to the said Bank which had been assumed by the said Templeton, the said Fleming shall also indorse the said notes upon the back thereof and

guarantee the payment of the same except one of said notes for the sum of $25,000.00.

Fourth. For the purpose of securing to the said bank (in addition to other collateral pledged therefor) payment of all the said notes executed by said D. A. Templeton and for the further purpose of securing the said Fred Fleming in his indorsement and guarantee of said notes, the said Fleming does hereby transfer and assign and will immediately cause to be transferred on the books of the said bank fifteen hundred (1500) shares of the stock of the said bank to the said Fred Fleming, the said certificates to be made out on their face and on the books of the bank in the name of Fred Fleming, subject, however, to the following agreements and conditions, to-wit: That the stock so transferred to the said Fleming shall be held, owned and controlled by him with the absolute right to vote the same at all meetings of the stockholders of the Western Bank & Trust Company, and the said Fleming shall have the right and he is hereby empowered at his discretion to sell the said stock or any part thereof at such prices as may to him seem best at public or private sale,
and when so sold to receive the proceeds of said
144 sale or sales which shall be applied as creditors
upon the said notes herein referred to executed to the said Western Bank & Trust Company by the said Templeton. When the said notes have been fully paid by the said Templeton or by the sale of the said stock or of any other collateral to the said notes, the said stock or any part thereof which shall remain unsold for the purposes herein mentioned shall again become wholly the property of D. A. Templeton and shall be re-transferred to him by the said Fleming his heirs or assigns upon the books of the said bank. It is understood and agreed, however, that the said Templeton having already pledged portions of said stock to the Western Bank & Trust Company as collateral for indebtedness and portions of the said stock as collateral to notes and indebtedness to other persons or corporations, that the transfer of said stock to said Fleming described in this paragraph for the pur-

pose therein mentioned shall be subject and subordinate to the rights of creditors to whom any part of said stock has already been assigned in pledge and so much of said stock as has heretofore been so assigned shall as soon as practicable be transferred on the books of the Western Bank & Trust Company to the said Fleming and the certificates so transferred shall be delivered to the respective creditors now holding in pledge portions of said shares, a like number of new shares so transferred to said Fleming being deposited with each of said creditors in lieu of the shares now held by them in pledge and subject to the same rights as to said pledged stock now held by the respective creditors. And it is further understood and agreed that the transfer of stock by the said Templeton to the said Fleming in this paragraph is subject to all the terms of a certain instrument of date the 28th day of November, 1907, executed by the said D. A. Templeton and others, transferring their stock in the Western Bank & Trust Company to Fred Fleming, which instrument is hereby referred to and made a part hereof.

Fifth. The said Templeton does hereby authorize the Western Bank & Trust Company to credit upon any one of the notes above described executed by him to the said bank the sum of ..... dollars now on de-
145 posit in the said bank to the account of .....

Sixth. The said Templeton having sold to the said Thompson, Neale and Matthews the amount of the stock of the bank above mentioned, and they having executed their notes therefor to the said bank and it being possible that said sales of stock may be rescinded by the said respective parties or some of them; if the said sale shall be rescinded by any of the said parties and their said note or notes cancelled and the said stock returned to the said Templeton, then the said Templeton agrees to at once transfer and deliver the same and cause the same to be transferred on the books of the bank to Fred Fleming, subject to all the terms and conditions set forth in paragraph four hereof as to the said stock therein transferred to the said

Fleming, which shall apply fully to the stock which may be transferred to the stock which may be transferred to the said Fleming under the terms of this paragraph. In the event of such return of said stock and cancellation of the same, as herein mentioned, the said Templeton agrees to execute his note equal to the par value of the said stock so returned to him to the said bank with interest from date thereof at six per cent per annum, which note or notes the said Fleming agrees to indorse and guarantee.

Seventh. As to the stock of the said bank, aggregating fifty thousand ($50,000.00) dollars in par value sold by the said Templeton to sundry persons not mentioned by name herein, it is agreed between the parties hereto that the said Fleming and the said Templeton shall enter into separate written contracts of even date herewith guaranteeing to the said bank the payment of the several notes executed by the said persons for the purchase of the said stock.

In witness whereof, the parties hereto have hereunto set their hands this the 7th day of December, 1907.

Signed FRED FLEMING.
D. A. TEMPLETON.

146 EXHIBIT "G-1".

Geo. T. Jester, President. Geo. E. Jester, Cashier.
Chas. M. Thornell, A. Cash.
The First State Bank.
Capital $50,000.00.

Corsicana, Texas, November 4th, 1909.

Hon. Richard Mays,
City.

Dear Sir:

Yours of the 1st concerning loans made by the Corsicana Nat'l. Bank to Fred Fleming and D. A. Templeton received.

I did not make the loan and was not present when loan was made; I did not approve the loan as it was made;

I was not consulted in the renewal of notes, and in fact did not know notes were renewed; I was in town when Fleming & Templeton were here negotiating this loan, but they did not mention the subject to me, and not being present when the loan was made, I have no personal knowledge as to who made the loan.

Yours very truly,

GEO. T. JESTER.

EXHIBIT "H-1".

Corsicana National Bank.
No. A 7831.

Corsicana, Texas, June 14, 1907.

Pay to the order of Fleming & Templeton, $769.41, seven hundred sixty-nine and 41-100 dollars.

A. G. ELLIOTT,
Ass't. Cashier.

To Western Bank & Trust Co.,
Dallas, Texas.

Indorsed on back-Cash. Pay to the order of any Bank, Banker or Trust Co., June 14, 1907.
147 All previous indorsements guaranteed Fleming & Templeton, Bankers, Corsicana, Texas.
Perforated through face. Paid, 6:17:07.

EXHIBIT "J-1".

Corsicana National Bank.
No. A 7828.

Corsicana, Texas, June 4, 1907.

Pay to the order of Dunn & Talley, $32,003.50 thirty two thousand three and 50-100 dollars.

A. G. ELLIOTT,
Ass't. Cashier.

To Western Bank & Trust Co.,
Dallas, Texas.

Indorsed on back. Pay Western Bank & Trust Co., Dunn & Talley.
Perforated through face: Paid 6:5:07.

Exhibit "J-1" Con.

Corsicana National Bank.
No. A 7829.

Corsicana, Texas, June 4, 1907.
Pay to the order of Dunn & Talley, $101.50, one hundred one and 50-100 dollars.

A. G. ELLIOTT,
Ass't. Cashier.

To Western Bank & Trust Co.,
Dallas, Texas.

Indorsed: Pay Western Bank & Trust Co. Dunn & Talley.
Perforated through face: Paid 6:5:07.

148 EXHIBIT "K-1".

Exhibit K-1 is a list of the notes bought from Fleming & Templeton by Dunn & Talley, the details of which are immaterial.

EXHIBIT "L-1".

Annual Stockholders Meeting of the Corsicana National Bank.

The regular annual meeting of the stockholders of the Corsicana National Bank was held at its banking house

and place of business in the City of Corsicana, Texas, on Tuesday, January 11th, 1910, beginning at 7:30 P. M.

The following stockholders were present, owning and holding the shares of stock set opposite their names, respectively:

J. A. Thompson	413 shares
C. G. Heflin	200 "
A. J. Wareing	10 "
Richard Mays	10 "
R. R. Kerr	20 "
I. N. Cerf, holding proxies for E. Raphael 10 and Louis Cerf 25	35 "
E. N. Johnson	10 "
A. H. Kerr	10 "
J. M. Kerr	10 "
Aggregating	718 shares

The total number of shares being 1000 and there being present and participating 718 shares, being more than a majority, the election of a chairman of the stockholders meeting was declared in order.

I. N. Cerf nominated J. A. Thompson as chairman of the meeting and also nominated E. N. Johnson secretary of the meeting. A. H. Kerr seconded both nominations. Whereupon the said J. A. Thompson and E. N. Johnson were unanimously elected to said respective positions to which they had been nominated.

The chairman of the meeting declared that the election of a Board of Directors of nine stockholders
149 for the ensuing year was in order.

G. J. Heflin, A. H. Kerr, and Richard Mays having heretofore been appointed judges were present in person to perform the duties of their appointment. Whereupon the stockholders went into the election by ballot of directors of the Bank. Each stockholder present casting one vote for each share of stock held. After the ballots had been cast and counted by said judges of the election, they declared that each of the following named stockholders had received 718 votes, to-wit:

J. A. Thompson	J. B. Fortson,
Richard Mays	Mrs. W. D. Haynie
G. J. Heflin	J. M. Bartlett
A. H. Kerr	J. S. Rice
L. Cerf.	

Whereupon last above named said stockholders were declared duly and legally elected directors of the Corsicana National Bank for the ensuing year.

W. M. Huggins, President of the Corsicana National Land & Loan Company, appeared as chairman of a committee of said Land Co., before the stockholders meeting and presented the following communication from said Land Co., to the Corsicana National Bank, demanding a return to said Land Co., by the Bank, of $30,000.00, with interest, being its money used by the Bank in connection with two Fleming and Templeton notes of date Dec. 10th, 1907, aggregating $30,000.00.

Said communication being substantially as follows:

"To the Stockholders and Board of Directors of the Corsicana National Bank: Corsicana, Texas:

Gentlemen:

On or about February 12th, 1908, the Corsicana National Bank transferred to the Corsicana National Land & Loan Co., two promissory notes aggregating
150 the sum of $30,000.00, executed by Fred Fleming and D. A. Templeton, which notes were at the time worthless and uncollectible, the makers being at the time insolvent, and for which some of the directors and officers of your bank caused the Corsicana National Land & Loan Company, to pay face value out of its moneys and funds.

It is submitted that this transaction was wrongful and illegal and the Land Co's. money should be returned to it by the bank, and for which we now respectfully make demand. And we now tender you the return of said notes and indebtedness together with all security, if any, belonging to same.

We also submit for your consideration a copy of a resolution adopted by the stockholders and directors of the Corsicana National Land Loan Co., setting forth the facts as we understand them to be, and evidencing our authority in presenting this communication and making this demand."

Respectfully,

(Signed) W. M. HUGGINS, Pres.
C. C. WALTON,
CLARENCE URBAN,
Committee.

"Whereas, on or about the 10th day of December, 1907, the Corsicana National Bank made a loan to Fleming and Templeton, in the sum of $30,000.00, evidenced by two notes of said date, each in the sum of $15,000.00, with interest, and due six months after date; and on or about January 15th, 1908, the said Fleming and Templeton became insolvent, failed and went into bankruptcy, whereby said notes became worthless and uncollectible, and on or about February 12th, 1908, with knowledge of the facts that said notes were of no value, certain of the directors and officers of the Corsicana National Bank illegally and wrongfully transferred said notes to the Corsicana National Land Loan Co., and for which the same officers and directors of the bank, who were likewise at the time officers and directors of said Land Co.,
151 did illegally and wrongfully transfer, divert, and set over to the Corsicana National Bank out of the funds of said Land Co., the face value of said notes, amounting to the sum of $30,000.00 and said notes have continuously remained of no value as they then were, and now are, whereby said Corsicana Bank has committed a wrong upon said Land Company, which has continued and now exists, whereby said Bank is in law, in fact and in good faith, liable to the Land Co. Therefore be it resolved by the Board of Directors of the Corsicana National Land Loan Co., that the president of the Land Co., W. M. Huggins, together with C. C. Walton and Clarence

Urban, directors, be appointed a committee of three to make demand upon the Corsicana National Bank for repayment and return of said money, and that a copy of this resolution be delivered to said Bank; and the President and two said directors are authorized and empowered to adjust, settle and liquidate said demand against the Bank; and that said Fleming and Templeton notes, and indebtedness together with any collateral security held in connection therewith and as surety therefor, if any be and the same is now here tendered and ordered returned to said Bank, and that the President and said two directors are now expressly authorized to perform and execute all of the provisions hereof and then to report to the Board of Directors the result of their work for its consideration."

Said communication was received and read to the stockholders and after which they authorized the statement to Mr. Huggins that they would give the matter their immediate consideration and advise himself and committee later. Mr. Huggins then retired from the meeting.

The stockholders took up said communications from the Corsicana National Land Loan Co., and after discussing and considering it, the following resolution was offered by G. J. Heflin, who moved its adoption. Mr. Heflin's resolution was substantially as follows:

"Resolved by the stockholders of the Corsicana National Bank in regular annual meeting assembled:

That the Board of Directors be and they were hereby fully authorized and empowered, in so far as
152 the stockholders can confer same, to act upon settle and adjust, pay or reject as in their judgment they may think just and legal, the demand and claim made on the Bank by the Corsicana National Land Loan Co., for the return and repayment to it of certain money transferred to the Bank out of its funds for the Fleming and Templeton notes, aggregating $30,000.00 and interest. If directors shall conclude that the Bank is liable to said Land Co., they will adjust and settle the claim. Otherwise they will reject it."

The foregoing motion was seconded, and being put, it was carried; and was thereupon declared adopted.

There being no further business, the stockholders meeting adjourned.

J. A. THOMPSON, Chairman.
E. N. JOHNSON, Secretary.

EXHIBIT "M-1".

Corsicana, Texas, Jan. 11, '10.

The newly elected directors of the Corsicana National Bank met in the office of the Bank on the above written date at 8:30 P. M., with the following members of the Board present, viz:

J. A. Thompson, G. J. Heflin, Richard Mays and A. H. Kerr.

It being ascertained that there was no quorum present, the meeting was adjourned to re-assemble January 13th, 1910, at 2 o'clock P. M., for the purpose of organizing the Board and for attention to such other business as the Board might desire to take up.

Corsicana, Texas, Jan. 13, 10.

The newly elected Board of Directors met in the office of the Bank on the above written date with following members of the Board present, viz:

J. A. Thompson, G. J. Heflin, J. B. Forston, A. H. Kerr and Richard Mays.

153 The Board proceeded to organize by the election of Mr. J. A. Thompson, President, Mr. G. J. Heflin, Active Vice-President, Mr. Richard Mays, Vice-President, Louis C. Wells, Cashier, and R. A. Caldwell and E. N. Johnson, as Assistant Cashiers.

The salary of J. A. Thompson was fixed at $250.00 per month and the salary of G. J. Heflin was fixed at $200.00 per month. On motion it was decided to fix other salaries at the next regular meeting.

A communication from the Corsicana National Land Loan Co., through its Committee, W. M. Huggins, C. C. Walton, and Clarence Urban was read as follows:

"To the Stockholders and Board of Directors, of the Corsicana National Bank, Corsicana, Texas:

Gentlemen:

On or about February 12th, 1908, the Corsicana National Bank transferred to the Corsicana National Land Loan Co., two promissory notes aggregating the sum of $30,000.00, executed by Fred Fleming and D. A. Templeton which notes were at the time worthless and uncollectible, the makers being at the time insolvent, and for which some of the officers and directors of your bank caused the Corsicana National Land Loan Co., to pay face value out of its moneys and funds.

It is submitted that this transaction was wrongful and illegal, and the Land Co's money should be returned to it by the Bank, and for which we now respectfully make demand, and we now tender you the return of said notes and indebtedness, together with all security, if any, belonging to same.

We also submit for your consideration a copy of a resolution adopted by the stockholders and directors of the Corsicana National Land Loan Co., setting forth the facts as we understand them to be, and evidencing our authority in presenting this communication and making this demand.

Respectfully,

W. M. HUGGINS, Pres.
C. C. WALTON,
(Signed) CLARENCE URBAN,
Committee."

154 Exhibit "M-1 Continued.

A copy of the resolution submitted by the above committee is as follows:

"Whereas, on or about the 10th day of December, 1907, the Corsicana National Bank made a loan to Fleming and Templeton in the sum of $30,000.00,evidenced by two notes of said date, each in the sum of $15,000.00 with interest and due six months after date; and on or about January 15th, 1908, said Fleming and Templeton

became insolvent, failed and went into bankruptcy, whereby said notes became worthless and uncollectible; and on or about February 12th, 1908, with knowledge of the facts that said notes were of no value, certain of the directors and officers of the Corsicana National Bank illegally and wrongfully transferred said notes to the Corsicana National Land Loan Co., and for which the same officers and directors of the Bank, who were likewise at the time officers and directors of said Land Co., did illegally and wrongfully transfer, divert, and set over to the Corsicana National Bank, out of the funds of said Land Co., the face value of said notes, amounting to the sum of $30,000.00; and said notes have continuously remained of no value as they then were, and now are, whereby said Corsicana National Bank has committed a wrong upon said Land Company, which has continued and now exists, whereby said Bank is in law, in fact, and in good faith liable to the Land Company. Therefore, be it resolved by the Board of Directors of the Corsicana National Land Loan Co., that the President of the Land Co., W. M. Huggins, together with C. C. Walton and Clarence Urban, Directors, be appointed a committee of three to make demand upon the Corsicana National Bank for the repayment and return of said money and that a copy of this resolution be delivered to said bank; and the President and two said Directors are authorized and empowered to adjust, settle, and liquidate said demand against the bank; and that said two Fleming and Templeton notes and indebtedness together with any collateral security held in connection therewith and as security therefor, if any, be and the same is now here tendered and ordered returned to said bank, and that the President and said two directors are now expressly authorized to perform and execute all the provisions hereof and then to report to the Board of Directors the result of their work for its consideration."

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A resolution passed at the meeting of the Stockholders of the Corsicana National Bank was read as follows:

"Resolved by the Stockholders of the Corsicana National Bank, in regular annual meeting assembled:

That the Board of Directors be and they are hereby fully authorized and empowered in so far as the stockholders can confer same, to act upon, settle and adjust, pay or reject, as in their judgment they may think just and legal, the demand and claim made on the bank by the Corsicana National Land Loan Company for the return and repayment to it for certain money transferred to the bank out of its funds for the two Fleming and Templeton notes aggregating $30,000.00 with interest; if the Directors shall that the Bank is liable to the said Land Company, they will adjust and settle the claim, otherwise they will reject it."

On motion by Mr. J. B. Fortson and seconded by Mr. A. H. Kerr, the following preamble and resolution was unanimously adopted, to-wit:

"Whereas, from the representations made by the representatives of the Corsicana National Land Loan Company, it appears that said Company may have a just and legal claim against the Corsicana National Bank, therefore,

Be it resolved, that Mr. J. A. Thompson, President of the Corsicana National Bank, is hereby authorized and empowered to communicate with the representatives of the Corsicana National Land Loan Co., and, if he believes their claim to be just and due, he is ordered to proceed to settle same in such way as he may deem to the best interest of the Corsicana National Bank."

Being no further business, meeting adjourned.

J. A. THOMPSON, President.
LOUIS C. WELLS, Cashier.

156 EXHIBIT "N-1".

Annual Stockholders Meeting of the Corsicana National Land Loan Company.

The regular annual meeting of the stockholders of the Corsicana National Land Co., was held at its office, beginning at 1 o'clock P. M., January 11th, 1910.

The following stockholders were present, owning and holding the shares of stock set opposite their names, respectively:

J. A. Thompson	413 shares
G. J. Heflin	200 shares
E. N. Johnson	10 "
J. M. Bartlett	10 "
Richard Mays	5 "
O. M. Peters	1 "
C. C. Walters	1 "
Clarence Urban	1 "
W. M. Huggins	1 "
J. A. Harper	1 "
J. B. Fortson	10 "
Total shares represented	653 shares

The election of chairman for the meeting was declared in order. G. J. Heflin nominated Richard Mays, which was seconded by C. C. Walton and the said Mays was unanimously elected chairman.

The election of a secretary was then called for and E. N. Johnson was elected to that position upon nomination of G. J. Heflin and second of J. A. Thompson.

The next order of business was the election of nine directors, as called for by the by-laws, for the ensuing year. Upon motion made by G. J. Heflin, and seconded by J. M. Bartlett, the secretary was instructed to cast the entire vote of all the stockholders present, for the following named nine persons as directors of the corporation, to-wit, O. M. Peters, C. C. Walton, Clarence

Urban, W. M. Huggins, J. A. Harper, J. A. Thompson, J. B. Fortson, E. N. Johnson, and G. J. Heflin.

157 The motion was carried by a unanimous vote. Whereupon the secretary cast and voted 653 votes for each of said above named nine persons, and they each of they were declared elected directors for the year by the Chairman.

O. M. Peters offered the following resolution which was seconded by C. C. Walton. This resolution was unanimously adopted, substantially as follows:

"Whereas, on or about the 10th day of December, 1907, the Corsicana National Bank made a loan to Fleming and Templeton, in the sum of $30,000.00, evidenced by two notes of said date, each in the sum of $15,000.00, with interest, and due six months after date; and on or about January the 15th, 1908, the said Fleming and Templeton became insolvent, failed and went into bankruptcy, whereby said notes became worthless and uncollectible; and on or about February the 12th, 1908, with knowledge of the fact that said notes were of no value, certain of the directors and officers of the Corsicana National Bank, illegally and wrongfully transferred said notes to the Corsicana National Land and Loan Company and for which the same officers and directors of the Bank, who were likewise at the time officers and directors of the said Land Co., did illegally and wrongfully transfer, divert and set over to the Corsicana National Bank out of the funds of said Land Co., the face value of the said notes, amounting to the sum of $30,000.00; and said notes having continuously remained of no value as they were then and now are, whereby the said Corsicana National Bank has committed a wrong upon said Land Co., which has continued and now exists whereby said Bank is in law, in fact, and in good faith, liable to the Land Co., therefore, be it resolved, that the Board of Directors of the Corsicana National Land Loan Co., be and are authorized and empowered to adjust, settle and liquidate said demand against said Bank; and that said two Fleming and Templeton notes, and indebtedness, together with

any collateral security held in connection therewith, and as security therefor, if any, be tendered and returned to the said Bank, and that the Board of Direct-
158 ors are now expressly authorized to perform and execute all provisions hereof as they may deem for the best interest of the Corporation."

This resolution was unanimously adopted.

Upon motion the stockholders' meeting adjourned.

RICHARD MAYS, Chairman.
E. N. JOHNSON, Secretary.

EXHIBIT O-1.

Board of Directors' Meeting of Corsicana National Land Loan Co.

The Board of Directors of the Corsicana National Land Loan Company met at its office, 2 o'clock P. M., January 11th, 1910. The following directors being present:

O. M. Peters
Clarence Urban
J. A. Harper
J. B. Hortson
E. N. Johnson.
C. C. Walton
W. M. Huggins
J. A. Thompson
G. J. Heflin

The first business in order was declared to be the election of officers. J. B. Forston nominated W. M. Huggins for president. C. C. Walton seconded this nomination. Mr. Huggins was uananimously elected, which was so declared. O. M. Peters was nominated for secretary by C. C. Walton. J. A. Harper seconded the nomination. Mr. Peters was unanimously elected, and so declared.

The other officers were then elected and so declared as follows:

C. C. Walton, 1st Vice-President.

Nominated by J. B. Forston, nomination seconded by Clarence Urban.

Clarence Urban, second Vice-President.

Nominated by J. A. Harper; nomination seconded by J. B. Fortson.

J. B. Fortson, Treasurer. Nominated by C. C. Walton; nomination seconded by J. A. Thompson.

All the foregoing officers were elected by a unanimous vote.

159 J. A. Harper then offered the following resolution for the consideration of the Board of Directors and moved its adoption. The resolution being substantially as follows:

"Whereas on or about the 10th day of December, 1907, The Corsicana National Bank made a loan to Fleming and Templeton, in the sum of $30,000.00, evidenced by two notes of said date, each in the sum of $15,000.00 with interest, and due six months after date; and on or about January 15th, 1908, the said Fleming and Templeton became insolvent, failed and went into bankruptcy, whereby said notes became worthless and uncollectible; and on or about February 12th, 1908, with knowledge of the fact that said notes were of no value, certain of the directors and officers of the Corsicana National Bank, illegally and wrongfully transferred said notes to the Corsicana National Land Loan Co., and of which the same officer and directors of the Bank, who were likewise at the time officers and directors of the said Land Co., did illegally and wrongfully transfer, divert and set over to the Corsicana National Bank, out of the funds of said Land Co., the face value of said notes, amounting to the sum of $30,000.00; and said notes have continuously remained of no value, as they were, and now are, whereby the said Corsicana National Bank has committed a wrong upon the said Land Company, which has continued and now exists whereby said Bank is in law, in fact and in good faith liable to the Land Company; therefore, be it resolved by the Board of Directors of the Corsicana National Land Loan Co., that the President of the Land Co., W. M. Huggins, together with C. C. Walton and Clarence

Urban, directors, be appointed a committee of three to make demand upon the Corsicana National Bank for the repayment and return of said money, and that a copy of this resolution be delivered to said Bank; and the President and said two directors are authorized and empowered to adjust, settle and liquidate said demand against the Bank; and that said two Fleming and Templeton notes and indebtedness together with any collateral security held in connection therewith, and as security therefor, if any, be and the same is now here tendered and ordered returned to said Bank, and that the President and two directors are now expressly authorized to perform and execute all provisions hereof.
160 And to then report to the Board of Directors the result of their work for its consideration."

Clarence Urban seconded the motion of J. A. Harper to adopt said resolution and the motion carried. The Directors voting being as follows:

Voting in the affirmative: O. M. Peters, J. A. Harper, C. C. Walton, W. M. Huggins, Clarence Urban.

Directors not voting being as follows: J. A. Thompson, G. J. Heflin, J. B. Fortson, E. N. Johnson.

There being no further business, the meeting adjourned on motion subject to call.

(Signed) O. M. PETERS, Sec'ty.
(Signed) E. M. HUGGINS, Pres.

EXHIBIT "P-1."

Meeting of the Board of Directors, January 14th, 1910.

The Board of Directors met in special meeting at the call of the President, and upon roll call, the following directors were present and answered:

W. M. Huggins, J. A. Harper
C. C. Walton, J. A. Thompson
O. M. Peters G. J. Heflin
Clarence Urban.

There being a quorum present and so declared, the minutes of the last directors meeting were read, corrected and approved.

Upon motion made by O. M. Peters and seconded by C. C. Walton, the President and Secretary were authorized to borrow on behalf of the Corporation fifty-one hundred dollars ($5,100) for a period of six months at
161 the best rate of interest obtainable, and to execute in behalf of the corporation a note or notes therefor. And that the president be authorized to use said money, together with any other money of the corporation, for the purpose of re-possessing the corporation of 204 shares of stock of the Capital Stock of the Fleming Ranch and Cattle Company. The motion, upon being put, was carried, the following directors voting in the affirmative: C. C. Walton, Clarence Urban, J. A. Harper, W. M. Huggins, O. M. Peters; Directors present but not voting: G. J. Heflin and J. A. Thompson.

The committee, consisting of W. M. Huggins, C. C. Walton and Clarence Urban, heretofore appointed to wait on the Corsicana National Bank and to demand of said Bank the return of thirty thousand dollars of the Corporation's money, hereto transferred to said Bank for Fleming and Templeton's notes and indebtedness, reported that they had performed the instructions given them and had waited on the stockholders and directors of said Bank, and demanded of them a return of said money and delivered to them a copy of the resolution adopted by the stockholders and directors of the Corsicana National Land Loan Co., and tendered to them a return of said notes and indebtedness, together with collateral, if any, securing same, and that said stockholders and directors of the Corsicana National Bank received said communication and demand and stated to the Committee that they would take the matter under consideration and advise them later; that thereafter, J. A. Thompson, President of the Corsicana National Bank, submitted a proposition to the Committee substantially as follows:

That the said Bank recognized the legality and justness of the claim of the Land Co., and that the Bank would pay said demand, provided the Land Co. would purchase from the Bank the physical properties of the Corsicana Cotton Mills for the sum of $65,000.00 and accept $30,000.00 of said amount in payment of its demand against the Bank; retransfer to the Bank said Fleming and Templeton notes and indebtedness, each in the sum of $15,000.00, together with all collateral security securing same and execute to the Bank its promissory note for $35,000.00, bearing 8%, and due six months after date, to be secured by all stock and bonds of said Cotton Mills. The proposition was made with the further understanding that none of the supplies, sloth, cotton, waste, not oils were to go with the physical properties of the Mill, but were to be retained and owned by the Bank and that the Bank would pay the current debts incident to the operation of the Mill to this date.

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The report of the committee was received and after due consideration and discussion, it was moved by J. A. Harper and seconded by O. M. Peters that the proposition made by the Bank, as above stated, be accepted by the Land Co., and the matter settled on the basis state above and that the President and Secretary be authorized to close up the transaction and to execute for and in behalf of the Corporation all papers and writings necessary or incident thereto, including the execution of said note or notes to said Bank in the sum of $35,000.00, and the transfer and delivery of all stock and bonds of said Corsicana Cotton Mills to secure said note or notes.

The motion, upon being put, was carried, the following directors voting in the affirmative:

W. M. Huggins, O. M. Peters, Clarence Urban, J. A. Harper, C. C. Walton.

Directors present and not voting: J. A. Thompson, G. J. Heflin.

There being no further business, the meeting adjourned.

W. M. HUGGINS, President.

O. M. PETERS, Secretary.

163 EXHIBIT "Q-1".

Office of Corsicana National Land Loan Co.

Corsicana, Texas, February 11, 1908.

The Board of Directors met in called session on this day with the following named present: Geo. T. Jester, J. M. Bartlett, C. L. Jester, S. W. Johnson, C. W. Jester and E. W. Johnson.

Upon motion made, seconded and carried, the President, Mr. C. W. Jester, was authorized and instructed to borrow from the Corsicana National Bank of Corsicana, Texas, the sum of twelve thousand five hundred dollars and execute the note of the Company therefor, payable at time he may consider best.

There being no further business for consideration the meeting adjourned.

Approved:

.....
President.

.....
Secretary.

EXHIBIT "R-1".

Corsicana National Bank.

Western Bank & Trust Co., Charge.
Dallas, Texas.

Date of your letter Dec. 19, 1907. For account D.A. Templeton & Fred Fleming $900.00.

Credit.....

EXHIBIT "S-1".

Exhibit S-1 is a certificate of stock issued 26th day of July, 1909, by Fleming Ranch & Cattle Company, showing that Corsicana National Bank was the owner of 204 shares of the stock.

164 EXHIBIT "T-1".

Exhibit T-1 is another certificate dated April 7, 1910, showing that Corsicana National Bank was the owner of 78 shares in Fleming Ranch & Cattle Company.

EXHIBIT "U-1"

Corsicana, Texas, Feb. 12, 1908.

Corsicana National Bank.

Pay to Corsicana National Bank, or order, $29,400.00, twenty-nine thousand four hundred dollars.

For two Fleming-Templeton notes $30,000.00, less interest unearned.

CORSICANA NAT'L. LAND LOAN COMPANY.

(Signed) Per A. G. ELLIOTT, Secretary.

Countersigned C. W. JESTER, President.

Stamped across face with rubber stamp:

Corsicana National Bank Paid Feb. 12, 1908, Corsicana, Texas.

EXHIBIT "V-1".

Corsicana National Bank.

Credit	Bills Receivable
Date of your letter	
*3157—D. A. Templeton	$15,000.00
*3158—Fred Fleming	$15,000.00
Charge	$30,000.00

Corsicana, Texas, Feb. 12, 1908.

Compared with originals and marked by Examiner Dec. 19, 1911.

A. B. LACY,
Special Examiner.

EXHIBIT "W-1".

Exhibit W-1 is an agreement between J. A. Thompson and G. W. Jester and other Jesters and J. M. Bartlett, dated March 29, 1909, by which Thompson sold to the other parties 360 shares of the capital stock of the First State Bank of Corsicana at $125.00 a share,
165 and the other parties agreed to sell to Thompson 252 shares of the stock of Corsicana National Bank at $270.00 a share. The agreement also sets forth that the second parties will turn over to the first party a share of Corsicana National Loan Company's stock for each share of Corsicana National Bank stock they deliver and without additional compensation.

EXHIBIT "X-1".

November 1st, 1909.

Mr. A. G. Elliott,
City.

Dear Sir:

On June 10th, 1907, you were one of the officers of the Corsicana National Bank, to-wit, Assistant Cashier. On said date some of the officers and directors of said Bank made a loan of $30,000.00 out of its money to Fleming & Templeton, evidenced by two notes, each in the sum of $15,000.00. Thereafter, on December 10th, 1909, said loan was renewed and two new notes, each in the sum of $15,000.00 signed by Fleming & Templeton were accepted, and which were made payable on June 10th, 1908.

Based upon the foregoing, I respectfully request you to advise me in writing immediately whether you, as such officer, made said loan and its renewal, or concurred in or approved it. Were you consulted or advised with concerning said loan or its renewal? Who among the officers and directors of said bank made said loan and its renewal?

It is not the purpose of the bank to give you any unnecessary trouble concerning this matter, nor to make you a party to any contemplated legal proceedings, if you had nothing to do with said loan. It is in view of this spirit that I have taken the liberty to request you to make response to the above. Of course you do not have to comply with this request, but in the event you shall fail to do so, I shall regretfully assume that you had connection with the making of said loan, and shall necessarily be compelled to make you a party
166 to any proceedings which may be instituted.

Yours very truly,

Attorney for Corsicana National Bank.

R.M.-A.T.S.

EXHIBIT "Y-1".

The City National Bank of Corsicana.

Corsicana, Texas, November 2nd, 1909.

Mr. Richard Mays,
Attorney for Corsicana Nat'l. Bank,
City.

Dear Sir:

Replying to your favor of the 1st, inst., it is my recollection the notes you refer to of Fleming & Templeton to the Corsicana National Bank were taken up; however, the records of the Corsicana National Bank no doubt show the entire transactions, to which I respectfully refer you.

Yours truly,
(Signed) A. G. ELLIOTT.

EXHIBIT "Z-1".

Nov. 26, 1909.

Mr. A. G. Elliott,
Corsicana, Texas.

Dear Sir:

In your letter to me of date, Nov. 2nd, 1909, you say that the two Fleming & Templeton notes to the Corsicana National Bank aggregating $30,000.00 were taken up.

Am I to understand from this that you mean to say, that the Bank received full value for said notes?

You refer me to the books and records of the Bank and the Corsicana National Land and Loan Co.,
167 and I notice certain entries made on the books of both concerns, in your hand-writing, showing that both of said notes were transferred by the Bank to the Land Co., and that the Land Co. paid the bank in full for them.

I beg to inquire if said entries represent real and bona fide transactions between the Bank and the Land Co.?

I would also thank you to advise me how you came to make those entries? Did you make them on your own responsibility, or did you do so because you were directed to do it?

Who directed you to act in regard to said transaction and make said entries?

I request this information in view of the fact that you were an officer of the Bank and also Secretary and bookkeeper of the Land Co., and made said entries.

I would be much obliged if you would reply to this without delay.

Yours truly,

Attorney for Corsicana National Bank.

That the foregoing evidence was all of the evidence introduced by either side, and there was no evidence before the jury save that hereinbefore set out, which was all received in evidence.

At the conclusion of the evidence, the plaintiff in writing requested the Court to charge the jury as follows:

"Plaintiff's Requested Charge No. 1.

Now comes the Plaintiff and requests the Court to charge the jury as follows:

You are instructed that under the testimony the plaintiff is entitled to recover a judgment herein against the defendant for the sum of $32,012.26, and you will, therefore, return into the following verdict, to-wit:

"We, the jury, find for the plaintiff, Corsicana National Bank of Corsicana, against the defendant, Samuel Wistar Johnson, in the sum of $32,012.26.",
168 which verdict your foreman will sign for the jury," but the Court refused to give said Charge No. 1, as requested, to which action of the Court the plaintiff then and there in open Court, and before the jury retired, excepted.

Thereupon, the plaintiff in writing requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 2.

Now comes the plaintiff, after the Court has refused to give its requested charge No. 1, and requests the Court to charge the jury as follows:

You are instructed that it appears from the uncontroverted evidence herein that the defendant, Samuel Wistar Johnson, was a director in the Corsicana National Bank, plaintiff herein, on June 10th, 1907, and as such director participated in and consented to the loan of $30,000.00 of the funds of the plaintiff, which was then a national banking association, to Fred Fleming and D. A. Templeton, which aggregate sum of money was borrowed by said Fred Fleming and D. A. Templeton either as a firm or as individuals and that the liability to the bank for said loan was evidenced by two notes of June 10th, 1907, each for $15,000, and each signed by Fred Fleming

and D. A. Templeton. And it further appears by the uncontradicted evidence in the case that on said June 10th, 1907, the capital and surplus of the plaintiff was $200,000 and no more.

You are instructed that Section 5200 of the Revised Statutes of the United States forbade the lending of the money evidenced by the said notes of Fred Fleming and D. A. Templeton, whether the sum was loaned to these persons as a firm or partnership or whether each individual of them borrowed $15,000.00 on the liability of himself as principal and of the other signer as surety, for the whole sum loaned was borrowed money and the liability of both principal and surety on the notes is covered by the provisions of said section of the Statute.

But the Court refused to give the said charge as requested, to which action of the Court, then and
169 there in open Court, and before the jury retired, the plaintiff excepted.

Thereupon, the plaintiff in writing, requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 3.

Now comes the plaintiff, after the Court has refused to give in charge to the jury the first and second charges requested by it, and requests the Court to charge the jury as follows:

You are instructed that it appears from the uncontradicted evidence herein that plaintiff's cause of action against the defendant did not accrue before December 10, 1907, and it further appears by the uncontradicted evidence that this suit was instituted at law on the 8th day of January, 1910, and in equity on the 4th day of February, 1910; and it further appears from the uncontroverted testimony and admissions of defendant that between the dates of December 10, 1907, and February 4th, 1910, he was absent from the State of Texas more than two months; so that you are instructed that plaintiff's suit herein was instituted before the bar of limita-

tion cut off the plaintiff's right to prosecute its cause of action and suit herein declared on against the defendant.

But the Court refused to give the said charge as requested, to which action of the Court, then and there in open Court, and before the jury retired, the plaintiff excepted.

Thereupon the plaintiff in writing requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 4.

Now comes the plaintiff, after the Court has refused to give the jury its requested charges numbers one, two and three and requests the Court to charge the jury as follows:

The testimony in this case shows without contradiction that on the 12th day of January, 1908, the plaintiff and the Corsicana National Land Loan Company, a corporation, had stockholders in common, that is to say each stockholder in each of the corporations owned the
170 same proportion of stock in the other corporation, and there was no stockholder in either corporation who was not also a stockholder in the other corporation. At said time the plaintiff and the said Corsicana National Land Loan Company also had common directors, that is to say each director in the plaintiff was also a director in the said Corsicana National Land Loan Company, and each director in the Corsicana National Land Loan Company was also a director in the plaintiff.

It is also uncontradicted in the evidence that on the 12th day of February, 1908, there was no officer of Corsicana National Land Loan Company who was not also an officer in the plaintiff.

Under these uncontradicted facts I charge you that it was in law impossible for the plaintiff and Corsicana National Land Loan Company to contract with each other, and, therefore, the purported and attempted contract entered into between the plaintiff and Corsicana National Land Loan Company on February 12, 1908,

whereby an attempt was made to sell and transfer without recourse the Fred Fleming and D. A. Templeton notes from the plaintiff to the Corsicana National Land Loan Company and to transfer from the Corsicana National Land Loan Company to the plaintiff $30,000.00 of a credit which the said Corsicana National Land Loan Company had on the books of the plaintiff, were entirely null and void and had no effect in changing the ownership of the said Fred Fleming and D. A. Templeton notes from the plaintiff to Corsicana National Land Loan Company, nor did said transaction have any effect in extinguishing the credit then owned and possessed by Corsicana National Land Loan Company on the books of plaintiff bank, and you will, therefore, disregard all testimony relating to the purported transfer of the said notes from the plaintiff to the Corsicana National Land Loan Company on February 12, 1908.

But the Court refused to give the said charge as requested, to which action of the Court, then and there in open Court, and before the jury retired, the plaintiff excepted.

Thereupon the plaintiff in writing requested the Court to charge the jury as follows:

171 Plaintiff's Requested Charge No. 5.

Now comes the plaintiff, after the Court has refused to give to the jury its requested charges numbers one, two, three, and four, and requests the Court to charge the jury as follows:

The testimony in this case shows without contradiction that on the 12th day of January, 1908, the plaintiff and the Corsicana National Land Loan Company, a corporation, had stockholders in common, that is to say each stockholder in each of the corporations owned the same proportion of stock in the other corporation, and there was no stockholder in either corporation who was not also a stockholder in the other corporation. At said time the plaintiff and the said Corsicana National Land Loan Com-

pany also had common directors, that is to say each director in the plaintiff was also a director in the said Corsicana National Land Loan Company, and each director in the Corsicana National Land Loan Company was also a director in the plaintiff. It is also uncontradicted in the evidence that on the 12th day of February, 1908, there was no officer of Corsicana National Land Loan Company who was not also an officer in the plaintiff.

Under these uncontradicted facts I charge you that it was in law impossible for the plaintiff and Corsicana National Land Loan Company to contract with each other, and, therefore, the purported and attempted contract entered into between the plaintiff and Corsicana National Land Loan Company on February 12, 1908, whereby an attempt was made to sell and transfer without recourse the Fred Fleming and D. A. Templeton notes from the plaintiff to the Corsicana National Land Loan Company and to transfer from the Corsicana National Land Loan Company to the plaintiff $30,000.00 of a credit which the said Corsicana National Land Loan Company had on the books of the plaintiff, were voidable; and it further appears from the uncontroverted evidence in this case that prior to the institution of this suit the plaintiff and the Corsicana National Land Loan Company avoided
172 said transaction, as they had a right by law to do; and you will, therefore, in your deliberations disregard all testimony before you in reference to the transactions between the plaintiff and the Corsicana National Land Loan Company which occurred on February 12, 1908.

But the Court refused to give the said charge as requested, to which action of the Court, then and there in open Court, and before the jury retired, the plaintiff excepted.

Thereupon the plaintiff in writing requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 6.

Now comes the plaintiff, after the Court has refused to give to the jury its requested charges numbers one, two, three, four and five, and requests the Court to charge the jury as follows:

You are instructed that it appears from the uncontroverted testimony herein that the plaintiff, Corsicana National Bank, and Corsicana National Land Loan Company, during all the transactions involved in this suit, had common stockholders who owned stock in each corporation in the exact proportion that such stockholder owned stock in the other corporation, and that this status of the stockholders in these corporations was not changed by the placing, without valuable consideration, of a few shares of the stock in Corsicana National Land Loan Company in the hands of certain persons, in an attempt to qualify these persons to act as directors in said Corsicana National Land Loan Company for the purpose of bringing about a change in the condition of the directorate of the two companies so that instead of the directors being all in common, a majority of the directors of each company might not be common directors.

You are, therefore, charged that in determining the question as to whether the plaintiff suffered a loss by occasion of the loan or loans made by the plaintiff to Fred Fleming and D. A. Templeton on June 20th, 1907, if you have found that said loan or loans constituted an excessive loan,

173 you will disregard all the testimony which has come before you in reference to the delivery by the plaintiff of the said notes to the Corsicana National Land Loan Company and the redelivery of them to the plaintiff, or any other transaction in respect to them had between the plaintiff and the Corsicana National Land Loan Company, for, in determining the rights of the parties in this case you are authorized to consider that any loss to the Corsicana National Land Loan Company was also a loss to the plaintiff.

But the Court refused to give the said charge as requested to which action of the Court, then and there in open Court, and before the jury retired, the plaintiff excepted.

Thereupon the plaintiff in writing requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 7.

Comes now the plaintiff, after the Court has refused to give in charge to the jury the first, second, third, fourth, fifth and sixth charges requested by it, and requests the Court to charge the jury as follows:

You are instructed that the uncontroverted evidence in this case shows that on the 12th day of February, 1908, the Corsicana National Bank transferred to Corsicana National Land Loan Company the two notes signed by Fred Fleming and D. A. Templeton, then evidencing the indebtedness for borrowed money growing out of the transaction on June 10th, 1907, and received in consideration of said transfer, which was without recourse, the sum of $30,000 from Corsicana National Land Loan Company, then standing to the credit of said Corsicana National Land Loan Company on the books of the plaintiff.

It is further uncontroverted in the evidence that at the time of this transfer and the receipt of this $30,000 by the plaintiff, the said Fred Fleming and D. A. Templeton had become notoriously insolvent and that this fact was known to the plaintiff and to the defendant and to the officers and directors of the plaintiff and of the Corsicana National Land Loan Company, who were the same per-
174 sons at the time said notes were transferred and said $30,000 so appropriated by the plaintiff.

It is further uncontroverted in the testimony that after said transfer of said notes the defendant, acting for the plaintiff, proved up the claim evidenced by said notes in the bankrupt estate of Fred Fleming, and received in the liquidation of said Fleming bankruptcy 282 shares of the capital stock of Fleming Ranch & Cattle Company, which certificates were taken out in the name of plaintiff.

Under these uncontroverted facts you are charged that the plaintiff was a trustee for Corsicana National Land Loan Company of the property and effects of the said Corsicana National Land Loan Company and could not

profit from the manipulation thereof, and that when the plaintiff was called upon by the Corsicana National Land Loan Company for an accounting as such trustee in respect of the $30,000 which it had appropriated to its own use of Corsicana National Land Loan Company's assets, the plaintiff was bound to accede to the demands of said Corsicana National Land Loan Company for restitution and had the legal right to make such restitution in any form of valuable consideration.

It further appears from the uncontroverted evidence in this case that on January 14th, 1912, the plaintiff and Corsicana National Land Loan Company agreed that such restitution might be accomplished by the conveyance on the part of the plaintiff to Corsicana National Land Loan Company of property called in the testimony "Corsicana Cotton Mills", in consideration of the $30,000 appropriated by the plaintiff, with interest thereon, and $35,000 of purchase money notes executed by the Corsicana National Land Loan Company to the plaintiff, and that said conveyance was made and the notes of the Corsicana National Land Loan Company executed, and that plaintiff was in possession of the notes executed by Fred Fleming and D. A. Templeton, and was also in possession of the shares of stock of Fleming Ranch & Cattle Company.

You are, therefore, instructed that if you find and believe from the testimony that the said Corsicana Cotton Mills, on January 10th, 1910, was reasonably worth the amount of $30,000, with interest thereon at the rate of
175 6 per cent from June 10th, 1908, to January 10th, 1910, plus $35,000, you will disregard all of the transactions between the plaintiff and the Corsicana National Land Loan Company in determining the rights of the parties herein.

But the Court refused to give the said charge as requested, to which action of the Court, then and there in open Court, and before the jury retired, the plaintiff excepted.

Thereupon the plaintiff in writing requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 8.

Comes now the plaintiff, after its requested charges numbers one, two, three, four, five, six, and seven have been refused by the Court, and requests the Court to charge the jury as follows:

You are specially instructed that if you find for the plaintiff herein, the measure of plaintiff's recovery, under the uncontradicted evidence, is the sum of $30,000 with interest thereon at the rate of 6 per cent per annum from June 10th, 1908 to this date, less the sum of $6,913.64 with interest thereon to this date at the rate of 6 per cent per annum from February 17th, 1911, and less the sum of $336 with interest thereon from June 27, 1911, to this date at the rate of six per cent per annum, and less the sum of $1900 with interest thereon at the rate of six per cent per annum from October 17th, 1911, to this date.

But the Court refused to give the said charge as requested to which action of the Court, then and there in open Court, and before the jury retired, the plaintiff excepted.

Thereupon the plaintiff in writing requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 9.

Comes now the plaintiff, after its requested charges numbers one, two, three, four, five, six, seven and eight have been refused by the Court, and requests the Court to charge the jury as follows:

176 You are instructed that if you find for the plaintiff in this case, the measure of the plaintiff's recovery is the sum of $10,000 with interest thereon at the rate of six per cent per annum from the 10th day of June, 1908 to this date.

But the Court refused to give said charges as requested, to which action of the Court, then and there in open Court and before the jury retired, the plaintiff excepted.

Thereupon, the plaintiff, in writing, requested the Court to charge the jury as follows:

Plaintiff's Requested Charge No. 10:

Comes now the plaintiff, after its requested charges numbers one, two, three, four, five, six, seven, eight and nine have been refused by the Court and requests the Court to charge the jury as follows:

If you believe from the testimony that the $30,000 loaned by the plaintiff on June 10th, 1907, was loaned to a partnership composed of Fred Fleming and D. A. Templeton; and you further find from the testimony that on January 14th, 1910 the Corsicana Cotton Mill property was of the reasonable market value of a sum equal to or more than the principal and interest at that time of the notes of Fred Fleming and D. A. Templeton and $35,000 agreed to be paid by the Corsicana National Land Loan Company, to the plaintiff in addition to the surrender of its claim against the plaintiff on account of said notes, you will return your verdict herein in favor of the plaintiff.

But the Court refused to give said charge as requested, to which action of the Court, then and there in open Court and before the jury retired, the plaintiff excepted.

And then after all said special charges had been requested by the plaintiff, as aforesaid, and after the Court had refused to give each and every one of them, and after the plaintiff had in open Court and before the jury retired, excepted severally to the refusal of the Court to give each of said charges, when he so refused them respectively, the Court instructed the jury peremptorily to return into Court the following verdict, to-wit:

177 "We, the jury, find for the defendant, Samual Wistar Johnston".

To which action of the Court in peremptorily instructing the jury to find in favor of the defendant, plaintiff then and there in open Court and before the jury retired excepted generally and on the following specific grounds, to-wit:

First: Because under the uncontradicted evidence in this case the Court should peremptorily instruct the jury to find for the plaintiff.

Second: Because if the Court is of the opinion that a peremptory instruction in favor of plaintiff should not be given, then the Court should give plaintiff's special charge Number 2 requested by plaintiff.

Third: If the Court is of the opinion that the last named Special Charge should not be given then the Court should give Special charge Number 3 requested by plaintiff.

Fourth: If the Court is of the opinion that the last named special charge should not be given, then the Court should give Special Charge Number 4 requested by plaintiff.

Fifth: If the Court is of the opinion that the last named Special Charge Number 4 should not be given, then the Court should give Special Charge Number 5 requested by plaintiff.

Sixth: Because if the Court is of the opinion that the last named Special Charge should not be given, then the Court should give Special Charge Number 6 requested by the plaintiff.

Seventh: Because if the Court is of the opinion that the last named Special Charge should not be given, then the Court should give Special Charge Number 7 requested by the plaintiff.

Eighth: Because if the Court is of the opinion that the last named Special Charge should not be given then the Court should give Special Charge Number 8 requested by the plaintiff.

Ninth. Because if the Court is of the opinion that the last named Special Charge should not be given then the Court should give Special Charge No. 9 requested
178 by the plaintiff.

Tenth: Because if the Court is of the opinion that the last named Special Charge should not be given, then the

Court should give Special Charge Number 10 requested by the plaintiff.

Eleventh: Because the undisputed testimony showed that the loan evidenced by the notes of Fred Fleming and D. A. Templeton was an excessive loan, and that the plaintiff had suffered damage by occasion thereof, and the Court should have submitted to the jury the amount of plaintiff's damage.

Twelfth: Because there was testimony before the jury warranting them in finding that the loan evidenced by the notes of Fred Fleming and D. A. Templeton was a loan to a partnership composed of those individuals doing business under the firm name and style of "Fleming and Templeton."

And in order that the matters hereinbefore set forth may be made a part of the record in this cause, the undersigned, attorneys for the plaintiff, present this their bill of exceptions, which has been duly exhibited to the attorneys for the defendant, and they pray that the Court may examine the same and approve the bill as correct and indorse such approval thereon and order the same filed and made a part of the record in this cause.

RICHARD MAYS, and
ETHERIDGE, McCORMICK &
BROMBERG,
Attorneys for Plaintiff.

Agreed to by us as correct.

HENRY C. COKE,
CULLEN F. THOMAS.
Attorneys for Defendant.

I, Edward R. Meek, the judge presiding on the trial of the above numbered and entitled cause, hereby approve the foregoing bill of exceptions on this the 2 day of March, A. D. 1916, in term time, and direct that the same may be made a part of the record in this cause, and that the Clerk file the same as a part of the record herein.

179

E. R. MEEK,
U. S. District Judge.

180 PETITION FOR WRIT OF ERROR.

Filed Apr. 22, 1916.

Now comes Corsicana National Bank of Corsicana, Texas, a corporation, plaintiff herein, and says that on or about the 14th day of January, 1916, the District Court entered a judgment herein in favor of the defendant and against the plaintiff, in which judgment and proceedings had prior thereto in this cause certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Fifth Circuit for the correction of errors so complained of, and that a transcript of the records, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

RICHARD MAYS and
ETHERIDGE, McCORMICK &
BROMBERG,
Attorneys for Plaintiff.

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181 ORDER ALLOWING WRIT OF ERROR.

Filed 22 day of Apr. 1916.

On this, the 22nd day of April, A. D. 1916, in said District Court, comes the plaintiff, by its attorneys, and files herein and presents to the Court its petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by it, praying also that a transcript of the records, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, and that such other and further proceedings may be had as are proper in the premises.

Upon consideration whereof the Court does allow the writ of error upon the plaintiff giving bond, according to law, in the sum of five hundred ($500) dollars, which shall operate as a supersedeas bond.

E. R. MEEK,
United States District Judge for the
Northern District of Texas.

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182 WRIT OF ERROR BOND.

Filed Apr. 22, 1916.

Know all men by these presents, that we, Corsicana National Bank of Corsicana, Texas, a corporation, as principal, and the other subscribers hereto as sureties, are held and firmly bound unto Samuel Wistar Johnson in the full and just sum of five hundred ($500) dollars to be paid to the said Samuel Wistar Johnson, his certain attorneys, executors, administrators and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of April in the year of our Lord one thousand nine hundred and sixteen.

Whereas, lately, at a District Court of the United States, in a suit pending in said Court between Corsicana National Bank of Corsicana, Texas, a copporation, plaintiff, and Samuel Wistar Johnson, defendant, a judgment was rendered against the said Corsicana National Bank of Corsicana, Texas, a corporation, and the said Corsicana National Bank of Corsicana, Texas, a corporation, having obtained a writ of error and filed a copy thereof in the clerk's office of said Court, to revise the judgment in said suit, and a citation directed to the said Samuel Wistar Johnson, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at the city of New Orleans, thirty days after the date hereof.

Now, the condition of the above obligation is such that if the said Corsicana National Bank of Corsicana, Texas, a corporation, shall prosecute said writ of error to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Signed and sealed on the date first herein mentioned.

CORSICANA NATIONAL BANK OF
CORSICANA, TEXAS,

183 By ETHERIDGE, McCORMICK &
BROMBERG [Seal]
Its Attorneys.

F. M. ETHERIDGE Surety [Seal]
J. M. McCORMICK, Surety [Seal]

Approved by me.
E. R. MEEK,
United States District Judge.

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184 ASSIGNMENT OF ERRORS.

Filed April 22, 1916.

The plaintiff in this case, in connection with its petition for writ of error, makes the following assignments of errors, which it avers occurred upon the trial of the cause, to-wit.

I.

The Court erred in refusing to sustain plaintiff's demurrer No. 1, contained in its first supplemental petition filed herein on the 11th day of January, 1916, addressed to the fourth paragraph of defendant's amended answer filed herein on the same day.

II.

The Court erred in refusing to sustain plaintiff's demurrer No. 2, contained in its first supplemental petition filed

herein on the 11th day of January, 1916, addressed to the sixth paragraph of defendant's amended answer filed herein on the same day.

III.

The Court erred in refusing to sustain plaintiff's demurrer No. 3, contained in its first supplemental petition filed herein on the 11th day of January, 1916, addressed to the seventh paragraph of defendant's amended answer filed herein on the same day.

IV.

The Court erred in refusing to sustain plaintiff's demurrer No. 7, contained in its first supplemental petition filed herein on the 11th day of January, 1916, addressed to the tenth paragraph of defendant's amended answer filed herein on the same day.

V.

The Court erred in giving to the jury a peremptory instruction herein in favor of the defendant.

VI.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 1.

185 VII.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 2.

VIII.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 3.

IX.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 4.

X.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 5.

XI.

The Court erred in refusing to charge the jury as requested in its special charge No. 6.

XII.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 7.

XIII.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 8.

XIV.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 9.

XV.

The Court erred in refusing to charge the jury as requested by plaintiff in its special charge No. 10.

XVI.

The Court erred in considering Sec. 5200 of the Revised Statutes of the United States, so as to exclude the liability of suretyship in calculating whether the loan or loans

involved herein exceeded the limit imposed by said section, on loans made by national banking corporations.

186 XVII.

The Court erred in refusing to give a peremptory instruction in favor of the plaintiff, when requested so to do.

RICHARD MAYS,
ETHERIDGE, McCORMICK & BROMBERG,
Attorneys for Plaintiff.

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189 CLERK'S CERTIFICATE.

I, LOUIS C. MAYNARD, Clerk of the District Court of the United States for the Northern District of Texas, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, assignments of error and all proceedings had in cause No. 2603, wherein the Corsicana National Bank is plaintiff and Samuel Wistar Johnson is defendant, except that the original writ of error and citation in error are included therein instead of copies thereof, as fully as the same remain on file and of record in my office at Dallas, Texas.

In testimony whereof, witness my hand and the seal of said District Court, at Dallas, this the 18th day of May, A. D. 1916, and of American Independence the 140th year

(Seal) LOUIS. C. MAYNARD, Clerk.

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of November 22nd, 1916.

No. 2934.

CORSICANA NATIONAL BANK

versus

SAMUEL WISTAR JOHNSON.

On this day this cause was called, and, after argument by Joseph Manson McCormick, Esq., for plaintiff in error, and Henry C. Coke, Esq., for defendant in error, was submitted to the Court.

Opinion of the Court.

Filed December 18th, 1916.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2934.

CORSICANA NATIONAL BANK

v.

SAMUEL WISTAR JOHNSON.

Error to the United States District Court for the Northern District of Texas.

Before Pardee and Walker, Circuit Judges, and Foster, District Judge.

By the Court: We find no reversible error in the rulings and proceedings in the Court below. None of the assignments of error are well taken.

Judgment affirmed.

Judgment.

Extract from the Minutes of December 18, 1916.

No. 2934.

Corsicana National Bank

versus

Samuel Wistar Johnson.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered and adjudged that the plaintiff in error Corsicana National Bank, and the sureties on the writ of error bond herein, F. M. Etheridge and J. M. McCormick, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Petition for Writ of Error, and Order Allowing Same.

Filed February 10, 1917.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2934.

Corsicana National Bank, Plaintiff in Error,

vs.

Samuel Wistar Johnson, Defendant in Error.

Petition for Writ of Error.

Your petitioner, Corsicana National Bank, of Corsicana, Texas, a corporation, plaintiff in error, in the above entitled cause respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit, and that a judgment has therein been rendered on the 18th day of December, 1916, affirming the judgment of the District Court of the United States for the Northern District of Texas, and that the matter in controversy in said suit exceeds one thousand dollars besides costs and that the jurisdiction of the court above mentioned is or was dependent in no wise upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of

different States, and that this cause does not arise under the patent laws, nor the revenue laws, nor the criminal laws, nor the bankruptcy laws, and that it is not an admiralty case, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error; and,

Therefore, your petitioner would respectfully pray that a writ of error be allowed it in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in said cause, with all things concerning same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by said plaintiff in error may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

CORSICANA NATIONAL BANK
OF CORSICANA, TEXAS,
Plaintiff in Error,

(Signed) By RICHARD MAYS AND
ETHERIDGE, McCORMICK &
BROMBERG, *Its Attorneys.*

The foregoing petition is granted and writ of error allowed as prayed for upon plaintiff's giving bond according to law in the sum of one thousand ($1,000) dollars.

Dated at New Orleans, this 10 day of February, A. D. 1917.

(Signed) DON A. PARDEE,
Senior Circuit Judge of the Circuit Court of Appeals for the Fifth Circuit.

Assignment of Errors.

Filed February 10, 1917.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2934.

CORSICANA NATIONAL BANK, Plaintiff in Error,

v.

SAMUEL WISTAR JOHNSON, Defendant in Error.

And now comes the plaintiff in error, Corsicana National Bank of Corsicana, a corporation, by its attorney, and says that in the record and proceedings aforesaid of said United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of said plaintiff in error in this, to wit:

1. Said Circuit Court of Appeals erred in entering judgment affirming the judgment of the District Court of the United States

for the Northern District of Texas that plaintiff take nothing by its suit and that defendant recover the costs of suit, entered on or about January 11th, 1916, in favor of said defendant in error and against said plaintiff in error.

2. Said Circuit Court of Appeals erred in not reversing said judgment of the United States District Court aforesaid and in not remanding said cause to said District Court for a new trial.

3. Said Circuit Court of Appeals erred in not sustaining the first assignment of error upon the record in said cause.

4. Said Circuit Court of Appeals erred in not sustaining the second assignment of error upon the record in said cause.

5. Said Circuit Court of Appeals erred in not sustaining the third assignment of error upon the record in said cause.

6. Said Circuit Court of Appeals erred in not sustaining the fourth assignment of error upon the record in said cause.

7. Said Circuit Court of Appeals erred in not sustaining the fifth assignment of error upon the record in said cause.

8. Said Circuit Court of Appeals erred in not sustaining the sixth assignment of error upon the record in said cause.

9. Said Circuit Court of Appeals erred in not sustaining the seventh assignment of error upon the record in said cause.

10. Said Circuit Court of Appeals erred in not sustaining the eighth assignment of error upon the record in said cause.

11. Said Circuit Court of Appeals erred in not sustaining the ninth assignment of error upon the record in said cause.

12. Said Circuit Court of Appeals erred in not sustaining the tenth assignment of error upon the record in said cause.

13. Said Circuit Court of Appeals erred in not sustaining the eleventh assignment of error upon the record in said cause.

14. Said Circuit Court of Appeals erred in not sustaining the twelfth assignment of error upon the record in said cause.

15. Said Circuit Court of Appeals erred in rendering judgment in favor of defendant in error and against plaintiff in error for costs of suit in said Circuit Court of Appeals.

Wherefore, the said Corsicana National Bank of Corsicana, plaintiff in error, prays that for the errors aforesaid, and other errors appearing in the record of the United States Circuit Court of Appeals in the above entitled cause to the prejudice of the plaintiff in error, the said judgment of the said United States Circuit Court of Appeals be reversed, annulled and held for naught and that the said cause be remanded to the United States District Court for the Northern District of Texas with instructions to grant a new trail in said cause, or for such further proceedings in said cause as may be determined upon by this Honorable Court to the end that justice may be done in the premises.

(Signed) RICHARD MAYS AND
ETHERIDGE, McCORMICK &
BROMBERG,
Attorneys for Plaintiff in Error.

Bond on Writ of Error.

Filed February 10th, 1917.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2934.

CORSICANA NATIONAL BANK, Plaintiff in Error,

versus

SAMUEL WISTAR JOHNSON, Defendant in Error.

Know all men by these presents: That we, Corsicana National Bank of Corsicana, a corporation, as principal, and the other subscribers hereto as sureties, are held and firmly bound unto Samuel Wistar Johnson in the full and just sum of one thousand ($1,000) dollars to be paid to the said Samuel Wistar Johnson, his certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 6th day of February, A. D. 1917, in the year of Our Lord, One Thousand Nine Hundred and Seventeen.

Whereas lately, at a Circuit Court of Appeals for the Fifth Circuit, a judgment was rendered against the said Corsicana National Bank of Corsicana, plaintiff, and Samuel Wistar Johnson, defendant, a judgement was rendered against the said Corsicana National Bank of Corsicana, and said Corsicana National Bank of Corsicana, having obtained a writ of error and filed a copy thereof in the Clerk's office of said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel Wistar Johnson citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington within thirty days after the date of said citation:

Now, the condition of the above obligation is such that if the said Corsicana National Bank of Corsicana shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

CORSICANA NATIONAL BANK
OF CORSICANA,
By (Signed) J. A. THOMPSON, *President.*

Sealed and delivered in the presence of:
(Signed) RICHD MAYS.
JOE B. BRADLEY.

Attest:
[SEAL.] (Signed) A. G. ELLIOTT, *Cashier.*
(Signed) J. A. THOMPSON. [SEAL.]
ROBT. M. THOMPSON. [SEAL.]

Approved by:
(Signed) DON A. PARDEE,
Senior Circuit Judge of the United States
Circuit Court of Appeals for the Fifth Circuit.

THE STATE OF TEXAS,
County of Navarro:

Before me, the undersigned, on this day personally came J. A. Thompson and Robt. M. Thompson, sureties on the foregoing bond, and being duly sworn by me, say upon their oaths, that they, and each of them, are well worth over and above all legal exemptions, the sum of one thousand dollars.

[SEAL.] (Signed) A. L. COLLIER,
Notary Public, Navarro County, Texas.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 185 to 193 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2934, wherein Corsicana National Bank is plaintiff in error, and Samuel Wistar Johnson is defendant in error, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 184 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 13th day of February, A. D. 1917.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit
Court of Appeals.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2934.

CORSICANA NATIONAL BANK, Plaintiff in Error,

vs.

SAMUEL WISTAR JOHNSON, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between Corsicana National Bank of Corsicana, plaintiff in error, and Samuel Wistar Johnson, defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from date hereof, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 10th day of February, in the Year of Our Lord, One Thousand Nine Hundred and Seventeen.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Allowed by:

DON A. PARDEE,
Senior Circuit Judge of the United States Circuit Court of Appeals for the Fifth Circuit.

CLERK'S OFFICE.

I hereby certify that a true copy of the within Writ has this day been lodged in the Clerk's Office for the use of the Defendant in Error.

Dated this 10th day of February, A. D. 1916.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER, *Clerk.*

[Endorsed:] No. 2934. In the United States Circuit Court of Appeals for the Fifth Circuit. Corsicana National Bank, plaintiff in error, v. Samuel Wistar Johnson, defendant in error. Writ of Error. U. S. Circuit Court of Appeals. Filed Feb. 10, 1917. Frank H. Mortimer, Clerk. Etheridge, McCormick & Bromberg, Attorneys-at-Law, Dallas, Texas.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2934.

CORSICANA NATIONAL BANK, Plaintiff in Error,
v.
SAMUEL WISTAR JOHNSON, Defendant in Error.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to Samuel Wistar Johnson, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, wherein Corsicana National Bank of Corsicana, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Don A. Pardee, Senior Circuit Judge of the United States Circuit Court of Appeals for the Fifth Circuit, this 10th day of February, in the year of Our Lord, One Thousand Nine Hundred and Seventeen.

DON A. PARDEE,
Circuit Judge.

Copy of writ served on us this 12th day of February, A. D. 1917.
CULLEN F. THOMAS &
COKE & COKE,
Att'ys for Defendant in Error.

[Endorsed:] No. 2934. In the United States Circuit Court of Appeals for the Fifth Circuit. Corsicana National Bank, plaintiff in error, v. Samuel Wistar Johnson, defendant in error. Citation on Writ of Error. U. S. Circuit Court of Appeals. Filed Feb. 14, 1917. Frank H. Mortimer, Clerk. Etheridge, McCormick & Bromberg, attorneys-at-Law, Dallas, Texas.

Endorsed on cover: File No. 25,800. U. S. Circuit Court Appeals, 5th Circuit. Term No. 970. Corsicana National Bank of Corsicana, plaintiff in error, vs. Samuel Wistar Johnson. Filed March 2d, 1917. File No. 25,800.

JAMES D. MAHER,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1918.

No. 970. 1423

CORSICANA NATIONAL BANK OF CORSICANA, Plaintiff in Error,

vs.

SAMUEL WISTAR JOHNSON, Defendant in Error.

ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE CORSICANA NATIONAL BANK, PLAINTIFF IN ERROR.

RICHARD MAYS,
FRANCIS MARION ETHERIDGE, and
JOSEPH MANSON McCORMICK,
Attorneys for Plaintiff in Error.

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BRIEF FOR

THE CORSICANA NATIONAL BANK,

PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The capital stock and surplus of plaintiff in error, a national banking corporation, on June 10, 1907 aggregated $200,000, enabling it lawfully to contract for a liability for borrowed money from any person, company, corporation or firm of $20,000 and no more. On the day mentioned the defendant in error was active vice-president and a member of the board of directors of the Corsicana National Bank, and as plaintiff in error claims was the dominating factor in the management of its bank. On this day the plaintiff in error, acting through the defendant in error chiefly, and other officers and directors, loaned $30,000, and the indebtedness thereby created was evidenced by two notes, each for $15,000, signed by Fred Fleming and D. A. Templeton, maturing six months after date. At their maturity these notes were renewed for the same amount and with the same signatures for an additional six months, the last notes being dated December 10, 1907. When the notes

were made and when they were renewed Fleming and Templeton were in fact solvent and were reputed to be so. When the original notes were made the signers were then or had recently been engaged in the banking business at Corsicana and elsewhere under the firm name of Fleming & Templeton and on June 10, 1907, the date of the notes, were liquidating their Corsicana bank through plaintiff in error's bank having arranged to do so by an agreement which included the making of this loan. Shortly after June 10, 1907, the plaintiff in error's bank was examined by a representative of the comptroller of the currency and on June 22, 1907 the comptroller wrote a letter to the plaintiff in error calling attention to the loan as being excessive and in violation of section 5200 of the United States revised statutes. Another examination of the bank was made February 6, 1908 and the comptroller again in a letter to the plaintiff in error of February 26, 1908 called attention to the Fleming & Templeton $30,000 loan and estimated the amount thereof as a total loss. The defendant in error and two others, acting for the plaintiff in error, had before any of these transactions and on May 3, 1907 organized a corporation under the laws of the state of Texas called "The Corsicana Land Loan Company", which we shall sometimes call the loan

company, with a capital stock of $50,000 paid in through a special dividend declared by plaintiff in error, which we shall sometimes call the bank.

All of the directors of the loan company during February, 1908 were directors of the bank as well. Before February, 1908 Fleming and Templeton had become notoriously insolvent and Fleming had been adjudged a bankrupt.

After the examination of the bank on February 6, 1908, the defendant in error and other directors of the bank, acting also as directors of the loan company, caused the Fleming and Templeton notes to be endorsed without recourse by the bank to the loan company and transferred $30,000 appearing on the books of the bank as money of the loan company from the loan company's account to plaintiff in error's account; and on March 11, 1908 the defendant in error and other directors of the bank replied to the comptroller's letter of February 26, stating: "With reference to the Fleming and Templeton item of $30,000, we beg to say that this item has been disposed of by the bank and they now owe us nothing."

The loan company proved a claim on the notes in the Fleming bankruptcy and in the settlement of that estate, participated in by the defendant in error acting for the loan company, the bank received 282

shares in the corporation known as Fleming Land & Cattle Company which was liquidated before this suit was tried and yielded to the bank the net sum of $9,149.64 as the proportion of its 282 shares.

On March 29, 1909, J. A. Thompson bought about 25 per cent of the capital stock of the bank from C. W. Jester and members of his family, with the expectation of becoming an officer of the bank, but the defendant in error manifested an unwillingness for Thompson to become such officer or even a director and through his influence with the directors blocked Thompson's election until he should first buy the defendant in error's interest of about 25 per cent in the bank. This Thompson did, paying for the stock the amount of a give or take price fixed by the defendant in error. The stock sold by the Jesters and by the defendant to Thompson and his friends included stock both in the bank and in the loan company and consisted of the same proportion of the stock of each corporation. The defendant in error claims (and Thompson denies) that before he made this purchase Thompson thoroughly investigated the assets of the two companies.

On or just before January 11, 1910, the boards of directors of the bank and of the loan company were so changed that a majority of each board were not

members of the other board. On January 11, 1910 the loan company demanded a return of the $30,000 taken from its treasury on account of the Fleming & Templeton insolvent notes, and negotiations between the two boards resulted in the bank recognizing the claim and satisfying it by the conveyance to the loan company of the stock and bonds of the Corsicana Cotton Mills, a corporation owned by it, for a total consideration of $65,000, $30,000 of which was in liquidation of the claim for the money received by plaintiff in error from the loan company on the Fleming and Templeton notes, and the remaining $35,000 was evidenced by a purchase money note of the loan company secured to be paid to the bank by a deposit of the stock and bonds of the Corsicana Cotton Mills as collateral; and the bank then received from the loan company the Fleming and Templeton notes. It already had certificates for the shares in the Fleming Ranch & Cattle Co. Nothing other than these shares was ever collected or collectable on the notes. After receiving the notes from the land company the bank instituted this suit under section 5239 United States revised statutes to recover from the defendant in error its loss growing out of the excessive loan evidenced by

the Fleming and Templeton notes. Section 5239 reads as follows:

> "If the directors of any national banking association shall knowingly violate or knowingly permit any of the officers, agents or servants of the association to violate any of the provisions of this Title, all the rights, privileges and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudicated by a proper circuit, district or territorial court of the United States, in a suit brought for that purpose by the comptroller of the currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation."

The defendant in error pled in bar the Texas statutes of limitation of two years, a general denial and in the sixth paragraph of his answer specially denied that the $30,000 was loaned to Fred Fleming and D. A. Templeton as partners or to the partnership of Fleming and Templeton, and averred that the money was advanced on two separate notes, one made by

Fred Fleming as principal and D. A. Templeton as surety, and the other by D. A. Templeton as principal and Fred Fleming as surety; and at a time when each of them was of high financial rating and in good credit. The eighth paragraph of the answer alleged that at the time of making these loans neither of the borrowers was indebted to the bank and that the capital and surplus of the bank was then in excess of $200,000. The ninth paragraph of the answer alleged that no loss had resulted to the plaintiff in error because the loan company purchased from the plaintiff in error the two notes without recourse and paid the plaintiff in error therefor in cash the full amount due on them. The tenth paragraph of the answer alleged that while it was true that shortly before the institution of the suit a change was brought about in the personnel of the board of directors of the loan company so that a majority of them were not directors in plaintiff in error, the change was one of form and not of substance because the holders of a majority of stock of the plaintiff in error and of the loan company caused the change to be made in order to create a cause of action against the defendant in error, which was the motive of the transaction between the two boards, and that the cotton mill was not worth more than $35,000, the sum agreed to be paid by the loan

company for it in addition to the surrender of the claim against the bank growing out of the transfer of the Fleming and Templeton notes. To this paragraph of the answer, except as to the parts thereof which allege the value of the mill and that plaintiff in error paid the land company nothing for the Fred Fleming and D. A. Templeton notes, plaintiff in error addressed a demurrer on the ground that the facts alleged do not constitute a defense in whole or in part to the plaintiff in error's cause of action. This demurrer, which was plaintiff in error's seventh demurrer, (R. 18) was overruled (R. 20), and plaintiff in error duly reserved an exception, (R. 21). In addition to its demurrers, plaintiff in error replied to the answer by a general denial and in a plea alleging that in the interval between the accrual of plaintiff in error's cause of action and the institution of the suit that the defendant in error was absent from Texas in the aggregate for a period of six months, and that from the time of the accrual of plaintiff's cause of action until May, 1909 the plaintiff was under the control and management of the defendant and his associates, whose acts gave rise to the cause of action declared on, and that the defendant in error was thereby estopped to claim that the time prior to said month of May should be included in computing the period of limitation.

The case was tried before the court and a jury and after the evidence was introduced the plaintiff in error requested the court to give in charge to the jury alternatively and in due order ten special charges, (the first a binding instruction in plaintiff in error's favor), all of which requests were refused and the court thereupon peremptorily instructed the jury to return a verdict in favor of the defendant in error, to which action the plaintiff in error in due season and appropriately excepted, on the grounds that the evidence only warranted a verdict in favor of plaintiff in error; that the undisputed testimony showed that the loan evidenced by the notes of Fred Fleming and D. A. Templeton was an excessive loan and that the plaintiff in error had suffered damage by occasion thereof, and that the court should have submitted to the jury the amount of plaintiff in error's damage, and that there was testimony before the jury warranting them in finding that the loan was made to a partnership, and that the several charges requested by the plaintiff in error, in the order in which they were requested, should have been given.

———o———

The questions involved arise from the overruling of plaintiff in error's exception to the tenth paragraph of the answer, the peremptory instruction in

favor of the defendant in error, and the refusal to give the several special charges requested by the plaintiff in error, and from the failure of the honorable circuit court of appeals for the 5th circuit to sustain the assignments challenging the rulings of the trial court in respect to these several matters. The questions for consideration here, as we conceive them, are those to which the following propositions are the affirmative answers:

FIRST.

The liability of a surety falls within the prohibition of section 5200 of the revised statutes of the United States.

SECOND.

The transactions of June 10, 1907 and December 10, 1907 constitute a joint loan rather than two individual loans.

THIRD.

The two corporations were so united in common ownership, management and purpose as to render financial damage to the loan company a loss to the bank.

FOURTH.

Viewing them as separate persons, the transfer of the notes from the bank to the loan company was fraudulent and voidable.

FIFTH.

Viewing them as separate persons, the transactions between the bank and the loan company in respect to the Fleming and Templeton notes were of such a nature as that the bank has the same rights in the cause of action sued on as if the fraudulent transfer of the notes from the bank to the loan company had not occurred.

SIXTH.

The status of the defendant in error in relation to the transfer from the bank to the loan company is that of a stranger for whose benefit the contract was not made, and is not analogous to the favored position enjoyed by the innocent purchaser for value.

SEVENTH.

The intent to institute a suit against the defendant in error, if such intent existed on the part of the bank and the loan company, did not deprive them of the right to so contract as to restore to the loan company an equivalent in value of its money taken in exchange for the notes and to restore the notes, and what had been received on account of them, to the bank.

EIGHTH.

The secondary liability of the defendant in error to the bank for the full collection of the notes could not be discharged through the receipt by the bank of funds under such circumstances as that, from legal or moral considerations, it was obliged to return these funds or their equivalent to the loan company in exchange for the notes and their collateral.

NINTH.

The claim of the bank was sued on within the period prescribed by the statute of limitations.

TENTH.

The record discloses no estoppel against the bank.

ELEVENTH.

The circuit court of appeals for the 5th circuit should have sustained plaintiff in error's assignments of error challenging the action of the trial court in failing to rule on the several questions suggested in favor of plaintiff in error, but that court overruled all of the assignments and affirmed the judgment of the court below. (R. 185). Appropriate proceedings to bring the cause to this court on writ of error were had. (R. 189-192).

SPECIFICATION OF ERRORS.

1. Said circuit court of appeals erred in entering judgment affirming the judgment of the district court of the United States for the northern district of Texas that plaintiff take nothing by its suit and that defendant recover the costs of suit; entered on or about January 11th, 1916, in favor of said defendant in error and against said plaintiff in error.

2. Said circuit court of appeals erred in not reversing said judgment of the United States district court aforesaid and in not remanding said cause to said district court for a new trial.

3. Said circuit court of appeals erred in not sustaining the first assignment of error upon the record in said cause.

4. Said circuit court of appeals erred in not sustaining the second assignment of error upon the record in said cause.

5. Said circuit court of appeals erred in not sustaining the third assignment of error upon the record in said cause.

6. Said circuit court of appeals erred in not sustaining the fourth assignment of error upon the record in said cause.

7. Said circuit court of appeals erred in not sustaining the fifth assignment of error upon the record in said cause.

8. Said circuit court of appeals erred in not sustaining the sixth assignment of error upon the record in said cause.

9. Said circuit court of appeals erred in not sustaining the seventh assignment of error upon the record in said cause.

10. Said circuit court of appeals erred in not sustaining the eighth assignment of error upon the record in said cause.

11. Said circuit court of appeals erred in not sustaining the ninth assignment of error upon the record in said cause.

12. Said circuit court of appeals erred in not sustaining the tenth assignment of error upon the record in said cause.

13. Said circuit court of appeals erred in not sustaining the eleventh assignment of error upon the record in said cause.

14. Said circuit court of appeals erred in not sustaining the twelfth assignment of error upon the record in said cause.

15. Said circuit court of appeals erred in rendering judgment in favor of defendant in error and against plaintiff in error for costs of suit in said circuit court of appeals.

Point 1. The liability of one who appears to be a joint maker on the face of a note given for money borrowed from a national banking association, but in fact is a surety, must be included in totaling his liability to the bank, to which section 5200 of the revised statutes of the United States applies.

The court refused plaintiff in error's requested charge No. 1 which read as follows:

> "You are instructed that under the testimony the plaintiff is entitled to recover a judgment herein against the defendant for the sum of $32,012.26 and you will therefore return the following verdict to-wit: 'We, the jury, find for the plaintiff Corsicana National Bank, of Corsicana against the defendant Samuel Wistar Johnson in the sum of $32,012.26,' which verdict your foreman will sign for the jury."

Exception was duly reserved. (R. 167). Plaintiff in error then requested the court to charge as follows:

> "You are instructed that it appears from the uncontroverted evidence herein that the defend-

ant, Samuel Wistar Johnson, was a director in the Corsicana National Bank, plaintiff herein, on June 10, 1907, and as such director participated in and consented to the loan of $30,000 of the funds of the plaintiff, which was then a national banking association, to Fred Fleming and D. A. Templeton, which aggregate sum of money was borrowed by said Fred Fleming and D. A. Templeton either as a firm or as individuals and that the liability to the bank for said loan was evidenced by two notes of June 10th, 1907, each for $15,000, and each signed by Fred Fleming and D. A. Templeton. And it further appears by the uncontradicted evidence in the case that on said June 10th, 1907, the capital and surplus of the plaintiff was $200,000 and no more.

You are instructed that section 5200 of the revised statutes of the United States forbade the lending of the money evidenced by the said notes of Fred Fleming and D. A. Templeton, whether the sum was loaned to these persons as a firm or partnership or whether each individual of them borrowed $15,000 on the liability of himself as principal and of the other signer as surety, for the whole sum loaned was borrowed money and the liability of both principal and surety on the notes is covered by the provisions of said section of the statute."

Exception was duly reserved. (R. 167-168). The court gave a peremptory instruction in favor of the defendant in error, (R. 176), to which exception was duly made (R. 176).

On June 22, 1906 section 5200 was amended. Prior to that time it consisted of the words following, which are not in black face; those in black face constitute the amendment:

> "Section 5200. The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such association, actually paid in **and unimpaired and one-tenth part of its unimpaired surplus fund: Provided, however, that the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the association.** But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed." (34 Stat. L. 451).

Before the section was amended this court had occasion to investigate the meaning of the word

"liabilities" as used in section 5211, which with section 5200 was originally enacted as a part of the national banking law of July 3, 1864, appearing in the 13th statutes at large 110. Section 5211 requires every national banking association in certain reports to the comptroller to exhibit the resources and liabilities of the association on a day to be named by the comptroller, and another section of the law makes it a criminal offense to file a false report. Cochran and Sayre were officers of a national banking association who filed a report in which they did not include among the liabilities of the bank a note made by Sayre and one Clark, and the payment of which was guaranteed by the banking association to another banking association. Cochran and Sayre were indicted for making a false report. They were convicted and appealed to this court. In disposing of certain objections to the admission of testimony, which the court suggested went to the very foundation of the prosecution, this court said:

> "The indictment, therefore, raises the question whether an unmatured note, the payment of which at maturity is guarantied by the bank, is such a liability as is required by the law to be shown in the report to the comptroller of the currency. The fact that the note had not matured cuts no figure in the case. If the bank had

made the note, it would not be claimed that the note was not a liability, though it were not yet due. The real question is whether the fact that the bank was only contingently liable prevented its character as a "liability" of the bank from attaching.

"We know of no definition of the word 'liability' either given in the dictionaries or as used in the common speech of men, which restricts it to such as are absolute, or excludes the idea of contingency. In fact, it is more frequently used in the latter sense than in the former, as when we speak of the liability of an insurer or a common carrier, or the liability to accidents or to errors; and in Webster's Dictionary the word 'liable' is said to refer 'to a future possible or probable happening, which may not actually occur; as horses are liable to slip; even the sagacious are liable to make mistakes.'

"That congress must have contemplated contingent liabilties is evident, when we consider the object of section 5211, which was to apprise the comptroller of the currency and the public of the condition of each national bank at stated periods. It is manifest that a report which failed to specify the liabilities which the bank had assumed, and which it might be called upon to discharge, would represent very imperfectly the actual financial status of the association."

Cochran v. U. S., 157 U. S., 295;
Hyatt v. Anderson, 74 S. W., 1094.

Besides, the liability of the joint maker of a note who is surety, and known to the payee to be such, is not contingent. It is absolute and direct. The fact of suretyship does not change the contract. It only introduces a collateral contract.

The New York court of appeals considered a case arising on a promissory note in these terms:

> "One day from date, for value received, I promise to pay Samuel Hubbard, or bearer, one thousand dollars with use.
>
> "Dated April 1st, 1872.
>
> "S. H. Gurney,
> "Jesse Gurney."

The answer alleged that Jesse Gurney signed as surety; that plaintiff by agreement of the principal debtor, without defendant's knowledge or consent, extended the time of payment. Over the objection of the plaintiff defendant was permitted to prove by parol that the note was given for money loaned to S. H. Gurney, and that the defendant signed as surety. On the appeal Chief Justice Church, speaking for the court, used this language:

> "The general rules of evidence are the same at law as in equity, and it is no more competent

to vary the terms of a written instrument by parol evidence in equitable actions than in those strictly legal, unless in exceptional cases for the purpose of maintaining an action or defense under some recognized head of equitable jurisdiction. The confusion and apparent conflict in authorities, I think, have originated in the idea that defenses of this character were equitable in their nature, and could only be available in a court of equity. When it was conceded they were equally available in a court of law, it is difficult to find a reason for excluding the same evidence at law that is admissible in equity. However this may be, and without invoking any equitable rule, a conclusive answer to the objection to this evidence in any court, in my opinion is, that it does not tend to alter or vary either the terms or legal effect of the written instrument. The contract was in all respects the same, whether the defendant was principal or surety. In either case, it was an absolute promise to pay $1,000 one day after date, nothing more and nothing less. There is neither condition nor contingency. It would have been precisely the same contract if the defendant had added the word "surety" to his name. The addition of that word would not have varied it in the slightest degree. The only service it would have performed would have been to give the notice to the other party of the fact. If this is shown aliunde, it is

equally effective. There is nothing inconsistent in the instrument with the fact that the defendant signed as surety, as in 10 Peters 263, where the sureties bound themselves in terms as principals. The fact is collateral to the contract, proving simply the relation of the parties. It is an extrinsic circumstance, not affecting the contract made, but which operates, when knowledge of it is brought home to the creditor, to prevent him from changing the contract or making a different one with the principal debtor, without the consent of the surety, or from releasing any surety held for the payment of the debt, and imposes the duty of enforcing the contract when due, upon the request of the surety. The right to do these acts or omit to perform such duty in no legal sense, belongs to or is included within the terms or legal effect of the contract. The prohibition results from the relation of the parties. Nor is there any hardship upon the creditor in this rule. If the word "surety" had been added to the name of the defendant, it is conceded that the defense sought to be interposed would be available in any court; and yet that word, as we have seen, would not affect the contract. The fact proved by extrinsic evidence and that the creditor has knowledge of it, is as potent as if added to the name of the surety; and it is potent, not in varying the contract, but in imposing certain duties and obli-

gations upon the creditor in his subsequent dealings with the principal debtor in respect to the contract. These views appear to be palpably correct upon general principals, and they are sustained by a decided weight of authority, and, if the distinction between the different courts is ignored, as I think it should be, by a uniform current of authority."

(The emphasis is ours).

Hubbard v. Gurney, 64 N. Y., 463;

Brandy on suretyship and guaranty, vol. 1, p. 94, 3d. ed.

It will be observed that while congress by the amendment, in a measure liberalized the statute, the meaning of the comprehensive word "liabilities" was not further restricted than in the original act. The amount of the total liabilities permitted was increased by the amendment in those cases where the capital was unimpaired and there was an unimpaired surplus, but no declaration was made that the term "liabilities" as used there, should not include even the contingent liability of a guarantor which the term, as used in article 5211 had been held by this court to embrace. The meaning of the word "liabilities" is only restricted to "money borrowed." Money obtained by the discount of bills of exchange drawn in good faith against existing values or by the

discount of commercial or business paper actually owned by the person negotiating the same is not to be considered as "money borrowed." Congress refrained from saying that money borrowed on two name paper where one name is that of a surety shall not be considered as "money borrowed."

A contingent and indirect liability flows from the discount of **bona fide** bills of exchange and of commercial or business paper actually owned by the person negotiating the same, but the liability is not for money borrowed because the discount of **bona fide** drafts against existing values or of notes actually owned is not borrowing money from the association, for these transactions constitute purchases of the paper. A banking association not only lends money, but discounts commercial paper for persons who own the paper. That is, it buys debts due from one to another.

The discounts excluded in the statute are "of bills of exchange drawn in good faith against actually existing values" and "of commercial or business paper actually owned by the person negotiating the same;" the money is exchanged for property, for the bill of exchange and business paper are property acquired by the bank. The money is not borrowed at all. There is no loan but a purchase. The indirect lia-

bility of one who discounts a kiting draft or accommodation paper must be entered in totalling his liabilities, for the word "actually" removes them from the exclusion. By carefully guarding the exclusion congress obviously intended that all liabilities for money borrowed should be included in the prohibition.

The term "discount" standing alone includes a loan as well as a purchase, and for that reason language was used in the excluding phrase to confine its meaning as there used to the **purchase** of negotiable paper and to eliminate from the exclusion those discounts which would be loans of money. One who actually owns commercial or business paper and who negotiates it is not a borrower of the money he receives from its sale. So one who is owner of a bill of exchange drawn in good faith against actually existing values, and who discounts the draft, or one who draws his own draft in good faith against actually existing values, and discounts it, is not a borrower of the money he receives from the discount. In order, however, to avoid a possible obstruction of these transactions, which are the circulating blood of commerce, the exclusion states explicitly that money so derived shall not be considered as borrowed money. The Fleming and Templeton notes, in the

hands of either Fleming or Templeton were not commercial or business paper actually owned by either of them, for the paper was inchoate until negotiated, was neither business nor commercial paper and after it became such was not owned nor discounted by them, so that when they, or either of them, negotiated this paper they borrowed money from the bank within the meaning of the statute and all the liabilities on the notes were liabilities for money borrowed for the repayment of which each signer was directly bound.

The defendant in error contends that $15,000 was borrowed by Fleming on his note with Templeton as surety, and the other $15,000 was borrowed by Templeton on his note with Fleming as surety, and he will probably contend here, as he did below, that while the money evidenced by one $15,000 note was money borrowed by Fleming, it was not money borrowed by Templeton, and therefore, as to Templeton, was not borrowed money; and so as to the money evidenced by the other note of which Templeton is said to have been the beneficiary and Fleming the surety. But we submit that such construction is not permissible, for the effect is to read words into the act which do not appear there and to import an exception which the statute does not contain. The

defendant in error would have the statute so construed as if it contained after the words "for money borrowed" the further words "by such person, company, corporation or firm." It is no more permissible, as we think, under well settled rules of construction to import words into a statute than to disregard those which appear there, and we suggest this case illustrates the necessity for the construction for which we contend. Each of two men under an agreement to become surety for one another, according to the defendant in error's theory approached the bank for a loan within its loaning power, the aggregate of the loans however, exceeding such loaning power. The loans were made. The loans so made are argued not to be excessive because direct liability only should figure in totalling and here part of the liability is contingent (which as we have shown is not the case). But suppose, instead of two associates, there had been five, each of whom desired to borrow $15,000 and each of whose associates had become surety on his note in consideration of a like accommodation to himself. Each loan would be for $15,000. They would aggregate $75,000. And yet if defendant in error is right, the transaction would not involve an excessive loan. The illustration obviously may be carried further by

enlarging the group. This construction would smoothe a convenient path around the slight obstacle which, in defendant in error's view, is interposed between a bank and its officers and directors by section 5200.

The comptroller of the currency did not construe the section as does the defendant in error and the trial court. The notes were discounted on June 10, 1907; the bank was examined on June 13, 1907 and on June 22, 1907, the comptroller wrote it a letter in which he said in part:

> "The report of examination of your bank made on the 13th inst. has been received and has had careful consideration.
>
> "The loans of your bank are limited to $20,000 as prescribed by section 5200, U. S. R. S., as amended. Notwithstanding former admonitions, the following accommodations are in excess of this amount:

Corsicana Cotton Mills	$24,000.00	
Do (overdraft)	20,395.02	
		$44,395.02
Schwartz & Company	$12,000.00	
Do (overdraft)	19,770.06	
		$31,770.06
Fred Fleming, D. A. Templeton		30,000.00

> "While the security protecting the Schwartz & Company indebtedness is said to be ample, it is

reported that the bank desires to give this concern more time in which to make settlement. The loan to Fred Fleming has become excessive and the indebtedness of the Corsicana Cotton Mills has been largely increased since the last examination. Immediate arrangements must be made to reduce these loans to the legal limit. An observance of the law in this respect is insisted upon and will be enforced by application of the penalty provided by section 5239, U. S. R. S., if persistently disregarded. You are requested to notify this office when the reductions have been made." (R. 107).

The transaction, as this shows, was considered by the comptroller as a loan **in solido** of $30,000 and as an excessive one. After he received this letter the defendant in error renewed the notes on December 10, 1907, and on February 6 following, the bank was again examined and after a report of the examination had been made the comptroller on February 26, 1908, wrote to the bank, called attention in drastic terms to section 5200 and its violation by five loans, excessive in amount, one of which he described as "Fleming and Templeton $30,000," and estimated this loan as a total loss. In this letter the comptroller also denounced the loan to Fleming and Templeton as in violation of law and stated that the

directors who were responsible for the loan or permitted it should assume liability for any loss which might be sustained thereon and not throw the burden on innocent stockholders, called attention to section 5239 as rendering directors who authorize or permit a loan in violation of law liable for the resulting damage to the bank, and notified the bank that unless immediate steps to reduce all excessive loans to the lawful limit were taken the comptroller's office would take action without further notice (R. 109-113); and he wrote to the bank on the same subject again on June 22, 1908. (R. 131-2).

Between the date of the examination on February 6, 1908 and the date of the letter of February 26, 1908, the defendant and other then officers of the bank endorsed and transferred the notes to the loan company and as officers of the loan company gave its check on the bank to the bank and thereby confiscated $30,000 of the loan company's money on deposit with the bank so that when the defendant in error, acting for the bank, answered the letter of February 26, 1908, he was able to say in his letter of March 11, 1908, "Reference to the Fleming and Templeton item of $30,000, we beg to say that this item has been disposed of by the bank and they now owe us nothing." (R. 114).

We submit that the classification in the comptroller's office of the transaction between the bank and Fred Fleming and D. A. Templeton, occurring on June 10, 1907, as an excessive loan under section 5200 was based on a construction of that section which should be given great weight in the consideration of its meaning by this court. The construction now contended for by the defendant in error palpably draws the teeth of the prohibition and opens an inviting door to the evader. It is significant that in his correspondence with the comptroller defendant in error did not claim that two loans were made nor deny that the loan was excessive.

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The amount incorporated in the plaintiff in error's requested charge No. 1 is the amount of the principal and unpaid interest of the two notes, less the credits resulting from the liquidation of the shares in the Fleming Ranch & Cattle Company. There was no conflict in the testimony as to the amount of the notes, the unpaid interest on them, or the amounts realized from the liquidation of the Fleming Ranch & Cattle Company's stock. (R. 3-5-9-23).

———————o———————

Point 2. The court should not have given the peremptory instruction in favor of the defendant in error because under the testimony the transactions of June 10, 1907 and December 10, 1907 were either conclusively shown to constitute respectively a loan made by the plaintiff in error to Fleming and Templeton jointly and a renewal or reloan of the money at the maturity of the notes originally given as the evidence of the loan, or the jury might reasonably have found that they were of this nature.

———————o———————

The consideration of this proposition will become immaterial if the court shall give the meaning to section 5200 suggested in our argument under point 1. The court gave a peremptory instruction in favor of the defendant in error (R. 176) to which plaintiff in error duly excepted among other grounds upon the one that there was testimony before the jury warranting them in finding that the loan represented by the notes of Fred Fleming and D. A. Templeton was a loan to a partnership composed of those individuals doing business under the firm name and style of "Fleming and Templeton." (R. 178).

The defendant in error's claim that the $30,000 constituted two loans actually so made in good faith

and not as an evasion is not consistent with the **res gestae** of the transaction nor with the testimony of the other witnesses, nor with his own conduct prior to the institution of the suit.

One of the bank directors, J. M. Bartlett, testified: "I do not think the board of directors either approved or disapproved the loan to Fleming and Templeton. I thought it was a bad loan, but I don't remember making or hearing any protest about it." (R. 56).

C. L. Jester, another member of the board of directors, testified:

> "The loan had been made before I knew anything about the matter, but I had an idea that Fleming and Templeton were leaving Corsicana. I do not think the board of directors regarded that as an excessive loan. While I never investigated it as a lawyer, I was under the impression that it was not an excessive loan." (R. 57).

Again he testified:

> "When this loan was made to Fleming and Templeton and the Corsicana National Bank took over Fleming and Templeton's business in Corsicana I thought they had quit business in Corsicana and gone in business in Dallas." (R. 59).

George T. Jester, another director, testified:

"Prior to the time the two notes of $15,000 each were made to the bank by Fleming and Templeton, I was passing through the bank and in the back part of the bank Dr. Johnson the defendant and Mr. Elliott were discussing this question and I stopped and we discussed the matter. The conversation was in regard to purchasing the effects of the little bank that belonged to Fleming and Templeton, or Dunn and Tally, I do not remember which. They were speaking of buying the notes of that bank and were to receive the deposits and also in connection with that, my understanding was, that it was necessary to make the loan to Fleming and Templeton. I think they probably wanted to borrow $15,000 each. I remember that I stated that the most important question was the question of security. It was suggested that the bank had plenty of money and that they had a good business. I remember that I stated that I doubted whether the Corsicana National Bank could hold all of these deposits of Fleming and Templeton, but after all it would be a question of security. The conversation was casual; I was just passing through the bank. At that time I had nothing to do with the active management of the bank, having sold nearly all of my shares five or six years before. I only held fifteen shares then. I had nothing to

do with making the loan. In talking with S. W. Johnson, vice-president, I neither approved nor disapproved the loan, but I remarked that after all it was a question of security, and the Doctor remarked that he didn't hardly think the bank would get the loan anyway, that he thought the City National Bank would be amply secured. $30,000 to two individuals is not an ordinary loan in Corsicana bank circles, but we can let a man have up to our limit. Dr. Johnson conferred with me about this loan, but did not ask me whether I thought it would be safe and a good loan. I did not approve that loan as it was made to Fleming and Templeton. I heard that the loan was renewed on December 10, 1907, but I was not advised with or consulted by Dr. Johnson and I was not present." (R. 60-61).

D. N. Rice, bookkeeper for the plaintiff in 1907, testified:

"I saw Fleming and Templeton in Corsicana in the summer of 1907, along about the time the loan was made to them. They were in the Corsicana National Bank conferring with Dr. Johnson. That was along late in the afternoon after banking hours. After Fleming and Templeton left the bank they went hurriedly toward the depot, evidently trying to catch the 5:25 or 5:30 train for Dallas. I did not hear the whole conver-

sation, but my impression was that a loan was made. Afterwards I knew that the loan was made. After that time the business of the banking firm of Fleming and Templeton was transferred to the Corsicana National Bank." (R. 63-64).

Ernest Johnson testified:

"The paper you hand me is a draft by the Corsicana National Bank, signed by assistant cashier Elliott, on the Western Bank & Trust Company, on the back of which is an endorsement of Fleming & Templeton to any bank or banker. I am no relation to S. W. Johnson, the defendant in this case. I have been with the Corsicana National Bank I think five years, and my present connection is as assistant cashier. I started with the bank as teller. I have here the draft register, which shows on June 10, 1907, 'Draft drawn on the Western Bank & Trust Company in favor of Fleming & Templeton for $29,100.' A. G. Elliott kept that book but my daily balances depended on its accuracy and it was correctly kept. At that time the Corsicana National Bank kept an account with the Western Bank & Trust Company, but I could not say what the balance was. The draft is No. 7830, and showed 'purchased by loan'. The $29,100 represented a loan. The general ledger which I have here shows an entry under date of December 20, 1907, on the Western Bank & Trust

Company, Dallas, Texas, December 20th, account D. A. Templeton and Fred Fleming, $900.' That represents a charge to Western Bank & Trust Company of $900. The book I have here is one which I kept, and shows $900 on December 20th, 1907 credited to interest. That offsets this charge of the same date. We charged Western Bank & Trust Company and credited interest $900.00. The draft for the $29,100, which was paid by corresponding notes, represented a loan of $30,000 with interest deducted for 6 months at 6 per cent, $900. The notes were those of Fleming and Templeton for $15,000 each, dated June 10, 1907. There was a second payment of interest on December 20th, 1907 for extension of the two notes for six months.

"The teller's cash book on June 10, 1907, shows two notes made on that date by Fleming and Templeton for $15,000 each. It shows under credit interest $900 paid by Fleming and Templeton." (R. 64-65).

E. W. Johnson, who was a director in 1907, testified as follows:

"I was a director in the Corsicana National Bank in 1907 and I might have been in 1908. Dr. S. W. Johnson did not consult with me with reference to making a loan to Fleming and Templeton in June, 1907 or in reference to its renewal in December, 1907.

"I do not know whether the loan was made to Fleming and Templeton or to the individuals Fred Fleming and D. A. Templeton. I know the loan was $30,000. I wasn't taking any part in the active management of the bank either in June or December, 1907. I have been out of the bank two or three years; I think I went out before the Jesters did.

"I have no knowledge that the loan of $30,000 was ever before the board of directors of the bank or that they voted its approval." (R. 67).

Dr. W. H. Dunn, testified:

"I worked for the firm of Fleming & Templeton in Corsicana before it sold out to the Corsicana National Bank. Before that sale Fleming & Templeton were in Corsicana a time or two and I know they were at the City National Bank, but I do not know whether they tried to sell out to that bank or not. The Western Bank & Trust Company did business in the same house that Fleming & Templeton did; took notes in the name of Western Bank & Trust Company, most of them. Fleming & Templeton took the deposits. We made a class of loans to farmers that were not taken in the name of the Western Bank & Trust Company. These farmers' loans were made to the Texas Cotton Commission Company. My recollection is that there were loans made by

Fleming & Templeton the last year or two. What loans were made were made by the Western Bank & Trust Company or the Texas Cotton Commission Company. A sign, Western Bank & Trust Company, was on one side, and I believe Fleming & Templeton, Bankers, had been on one side, but I do not know whether it was there when we went into liquidation or not. In that deal, Mr. Tally and myself sold some bills receivable to the Corsicana National Bank. Dunn & Tally bought all the bills receivable from Fleming & Templeton. My recollection is that at the time we made that trade we dealt with Dr. Johnson; Mr. Jester was somewhere else. We finally traded and I think Dr. Johnson was the man I had my talk with. I think they paid us exchange for some notes Tally and myself sold them—and exchange for $32,335 and another for $101.50. I think this was about thirty days after the sale of Fleming & Templeton to the Corsicana National Bank, which I think was the latter part of May, 1907." (R. 67-68).

R. Terry, a director, testified:

"I was never consulted or advised with by S. W. Johnson with reference to the Fleming and Templeton loan." (R. 70).

A. G. Elliott, assistant cashier of the bank when the notes were taken, testified:

"I did not know at the time that Fleming and Templeton tried to borrow this $30,000 and liquidate their business there from the First State Bank before they came to the Corsicana National Bank. I did not know that they had tried to make arrangements with the City National Bank, except Doctor told me that he thought they were figuring with the City National Bank. I have before me the first two notes for $15,000 each that were signed by Fleming and Templeton. There is nothing on the face of those notes to indicate that these men signed one as principal and one as surety or that they are other than joint makers of those notes. There is nothing on these renewed notes dated December 10, 1907 which I have here, to indicate that Fleming and Templeton signed other than as joint makers. I presume I made out the exchange in paying these men the money because Templeton told me to do it. Mr. Templeton attended to the details of it, so far as I know. He did not say that he acted for himself as well as Fred Fleming, but I acted on that assumption. I do not know that there was any final word to pay over this money to these men. I just carried it out; I issued the draft. I knew it was to represent the proceeds of these notes.

I do not know whether Dr. Johnson knew I paid out the money or not. He authorized me indirectly to pay the money. I drew the draft which you hand me for $29,100. That is my handwriting. It is payable to Fleming and Templeton. I know Templeton's handwriting, and it is endorsed Fleming and Templeton in Templeton's handwriting. When these notes were renewed in December following there might have been some correspondence between Dr. Johnson and Fleming and Templeton about their financial standing. I do not remember whether Fleming had executed a deed of trust to secure the depositors of the Western Bank & Trust Company, which was in a failing condition at that time; I remember he executed a deed of trust, but I do not remember if it was at that time. The first I knew of it was in The News. The deed of trust itself was published in The News. I do not recall that that was prior to the renewal of the notes. Along about June 10, 1907, the date of these two notes, or shortly afterwards, after this transaction reflected itself on the books of the bank, the bank was examined by one of the bank examiners. He accepted my construction of it, and I do not know whether he reported it or not. He passed it, so far as we were concerned; whether he made any exception to the treasury department I cannot say. I kept up the correspondence of the bank

and formed most of those letters to the department, usually after conferring with Mr. C. W. Jester. The letter you hand me, dated June 22, 1907,, from the department, looks like the one we got from them. It shows that the bank had been examined on the 13th of June. These notes, I think were transferred by Mr. Jester and Dr. Johnson to the Corsicana National Land & Loan Company in February, 1908. About that time I think that the Western Bank & Trust Company had gone into the hands of the receiver. I do not think my recollection is that Mr. Fleming was wrecked at that time; I thought he was still in pretty fair shape. I do not think Templeton's financial condition at that time was quite as good. On the 6th day of February, 1908, six days before we transferred these notes to the land and loan company, the bank examiner made an examination of the bank. We got a letter from the comptroller of the treasury from Washington on February 26th, again calling attention to section 5200 of the revised statutes as amended. The treasury department required a detailed reply, and I prepared an answer to that letter, with suggestions." (R. 104, 105, 106).

The comptroller on June 22, 1907, regarded the loan as a joint loan, (R. 107) and then advised the defendant in error that it was excessive and violative

of section 5200. After whatever explanations may have been made to the comptroller he still regarded it as a joint loan on February 26, 1908, and he so wrote the bank. (R. 111). The defendant in error himself appears to have been of the same opinion on March 11, 1908, for he signed the letter of that date to the comptroller, in which he lists the $30,000 as follows: "Fleming and Templeton $30,000" and proceeded to say: "Reference to the Fleming and Templeton item of $30,000 we beg to say, etc." (R. 114). The defendant in error, on June 10, 1907, the day the notes are dated, wrote a letter to Mr. D. A. Templeton, acknowledging receipt of the notes, saying nothing about either of the parties being surety thereon and remitting the proceeds of their discount, $29,100, (the discount was $900) in a draft payable to the order of Fleming and Templeton. (R. 20). This draft was endorsed "Fleming and Templeton," (R. 129) and was put to the credit of Fleming and Templeton in their joint account with the Western Bank & Trust Company on June 11, 1907 (R. 46). When the notes came to be renewed the defendant in error wrote Templeton about the "loan to you and Mr. Fleming," (R. 124) and Templeton wrote a letter to the defendant in error, in which he refers to the notes as

notes of Fleming and Templeton. (R. 122). Templeton sends in both the renewal notes in a letter dated December 19, 1907 (R. 123-124). In another letter of December 12, 1907, from defendant in error to Templeton he speaks of the notes as "your notes" and asks him to sign one of them as principal and one as surety and have Fleming sign them likewise. (R. 125). But if this request was complied with no evidence appears on the face of the notes of the capacity in which the signers considered themselves bound. The principal-and-suretyship was at best only a mental reservation not indicated on the notes as written. (R. 126-127). The account of Fleming and Templeton to which the proceeds of the notes were applied was a joint account (R. 46) and the $29,100 reduced an overdraft in this account in the Western Bank & Trust Company, amounting to $125,241.45 (R. 46). When the notes came to be renewed the money required for the discount of the renewal notes, to-wit, $900 was remitted from the Western Bank & Trust Company and charged to the Fleming and Templeton account (R. 46). This account continued active until December 30, 1907. (R. 47). At the time the notes were originally discounted Fleming had an individual account with the Western Bank & Trust Company and

Templeton had an individual account with the same bank, and they jointly, under the name of Fleming & Templeton, had an account there (R. 47), and it was to the credit of this last account that the $29,100 draft was placed (R. 46). A. M. Milligan, a director, testified:

> "With reference to the $30,000 loan to Fleming and Templeton, S. W. Johnson told me that he thought it was a good business proposition; he got the business of Fleming and Templeton." (R. 48). Also, "every time the bank examiner would come he would raise a rough house about the loans to Fleming and Templeton, and then at the directors meetings they would be discussed. (R. 49).

Fleming and Templeton controlled and operated the Western Bank & Trust Company, at the time plaintiff made the loan to them, on June 10, 1907, and at its renewal on December 10, 1907.

When they received from plaintiff the amount of the loan—$30,000—less $900 interest—$29,100—by way of draft on Western Bank & Trust Company, at Dallas (R. 128), the credit slip of said bank was as follows: "Credit Fleming and Templeton, Corsicana, date of your letter, deposit $29,100 June 12, 1907, June 11, 1907." (R. 138). The draft was

endorsed: "Fleming and Templeton," in the handwriting of Templeton (R. 105). When the notes were received, Fleming and Templeton paid the interest for the renewal period, by crediting plaintiff's account with Western Bank & Trust Company, and the credit slip was as follows: "Credit Corsicana National Bank, Corsicana, Texas, date of your letter, by F. & T. $900," and the stamp across the face was "Western Bank & Trust Company, paid Dec. 24, 1907, Collin, Teller, Dallas, Texas." (R. 138).

The charge slip of said bank, Exhibit "E-1", was as follows: "Charge **Fleming and Templeton,** Cr. Corsicana Nat. Bank $900 **O. K. F.,** Dec. 22, 1907," and the stamp, "paid 12-24-07." (R. 138).

L. C. McBride, receiver of Western Bank & Trust Company testified that, "The 'F' on said charge slip, Exhibit E-1, **is in Fred Fleming's handwriting"** (R. 46 bot.), (and he was uncontradicted). That "the $29,100 was credited on the books of the Western Bank & Trust Company, June 11, 1907, to account of Fleming and Templeton," and "$900 to same account December 22, 1907, with statement, credit to Corsicana National Bank." (R. 46).

On December 7, 1907, (R. 144) Fred Fleming and D. A. Templeton executed an agreement, abrogating an agreement theretofore made between them on

July 6, 1907, **subsequent to plaintiff's loan to them** on June 10, 1907, and adjusting liabilities, etc. The agreement states: "That, whereas, heretofore, on or about the **6th day of July, 1907, the said parties doing business under the firm name of Fleming and Templeton,** were indebted to the Western Bank & Trust Company, in the following sums, to-wit:" and etc. * * * The whole amount of the indebtedness of **the firm of Fleming and Templeton** to the said bank at said date (July 6, 1907) amounting to the sum of two hundred, forty-three thousand ($243,000) dollars * * * And, whereas, the said Templeton **agreed** with said Fleming to purchase the shares of the said Fleming, and also his interest in the shares owned by Fleming and Templeton (R. 139) * * * And, whereas, the said Fleming, on or about July 6, 1907, transferred and assigned to said Templeton all of the stock owned by him in the said bank individually, and his interest in the stock in the name of **the firm of Fleming & Templeton,** but, the said sale and transfer and the agreements made between the said parties hereto concerning same **remain otherwise incomplete.** (R. 140) * * *. And, it is further understood and agreed that the transfer of stock by the said Templeton to the said Fleming in this paragraph is subject to all the terms of a certain instrument of

date the 28th day of November, 1907, executed by D. A. Templeton and others, transferring their stock in the Western Bank & Trust Company to Fred Fleming, which instrument is hereby referred to and made a part hereof (R. 143) * * *. As to the stock of said bank, aggregating fifty thousand ($50,000) dollars in par value sold by the said Templeton to sundry persons not mentioned by name herein, it is agreed between the parties hereto that the said Fleming, and the said Templeton shall enter separate written contracts of even date herewith, guaranteeing to the said bank the payment of the several notes executed by the said persons for the purchase of the said stock" (R. 144).

The Western Bank & Trust Company was closed January 15, 1908 (R. 44 bot.).

In November, 1907, Fleming and Templeton executed a trust agreement to Doran and Hill to secure unsecured creditors of Western Bank & Trust Company, which was published in the Dallas News (R. 45-105).

Defendant agreed to make the loan before their Corsicana bank was closed. (R. 54).

On May 31st, 1907, the date their Corsicana bank was turned over to plaintiff, for liquidation, Fleming and Templeton prepared and mailed to their cus-

tomers, a circular letter (R. 69 bot.), headed thus: "Fleming & Templeton, Bankers, Corsicana, Texas." And saying: "On account of **our** large interest in Dallas and **our** removal to that city, making it impossible to give **our personal** attention to our business at Corsicana, **we have** decided to discontinue our office here after this date. According to our books you have $----------to your credit, which amount we have taken the liberty to turn over to the Corsicana National Bank and it has been placed to your credit on their books * * *" (R. 129) (Signed) **Fleming & Templeton,** by Harold Talley, Cashier" (R. 130).

Defendant in error testified: "When they terminated their business there, Fleming and Templeton were indebted to depositors, but in what sum I do not know. I took over their deposits when Fleming and Templeton ceased business at Corsicana, for Corsicana National Bank, The deposits were between $30,000 and $40,000." (R. 24). **One of the considerations of this** loan was the transfer of the deposits, and with it, the accounts of Fleming and Templeton" (R. 25). "I was familiar at that time with the banking law as to limitations on loans * * *" (R. 34). "After the Corsicana National Bank took over the business of

Fleming and Templeton, the Corsicana National Bank, under my direction, prepared a letter to the Fleming and Templeton customers, and Fleming and Templeton prepared and gave a statement to their customers. The letter you hand me of date May 31st I would say is a copy of the letter Fleming and Templeton prepared" (R. 41 bot.).

Elliott, assistant cashier, testified that one of the reasons for loaning the money was, that plaintiff was going to get the deposits of Fleming and Templeton and Western Bank & Trust Company (R. 104).

After defendant in error retired from plaintiff's board of directors, he remained on the board of directors of Fleming Ranch & Cattle Company, where he had theretofore served for some time, (R. 30) as the representative of plaintiff (R. 29). When creditors of Fleming and Templeton took over the ranch corporation out of bankruptcy, to be applied as a credit on their indebtedness (R. 129), stock of that corporation was issued to said creditors, in proportion to their claims.

At the direction of defendant in error (R. 29 and 77), two certificates of stock were issued to the bank —not to the loan company, in whose name the indebtedness had been proven in bankruptcy—one for 204 shares, dated July 26, 1909 (R. 162), and the other

dated April 7, 1910, for 78 shares (R. 163).

All of Fleming and Templeton deposits at Corsicana were not turned over to plaintiff, some of the savings deposits were taken from Corsicana to Dallas (R. 69).

In a letter to the comptroller of the currency (R. 114), signed by defendant in error (R. 117) and other directors, dated March 11th, 1908, it is stated: * * * You estimate losses to this bank as follows: * * * **Fleming & Templeton $30,000** * * * Reference to the **Fleming & Templeton item of $30,000** we beg to say that this item had been disposed of by the bank and **they** now owe us nothing" (R. 114).

On December 3, 1907, Templeton wrote defendant in error as follows: "Referring to the notes of **Fleming & Templeton** which will mature December 10, will you kindly forward six months renewal notes for these, in accordance with our understanding, and we will arrange to meet them on or before their maturity." (R. 122).

On December 7, 1907, Templeton wrote defendant in error as follows: "Replying to yours of December 4, have to say that, after talking with Mr. Fleming, we think we are correct in stating to you that there is no material change in **our** financial responsi-

bility as it existed at the time **our** notes were given to you, except as might be considered due to the general situation as affecting values temporarily. The guarantee executed by directors of this bank, which you doubtless have seen published, does not in any way effect **our** personal obligations previously made. * * *" (R. 123).

On December 19, 1908, Templeton wrote defendant in error, as follows: "Upon my return to the office this morning, after an absence of ten days, I find your very kind letter of the 12 inst., enclosing renewal notes which have been duly signed by Mr. Fleming and myself (R. 123), and are returned to you herewith. You will please mark the old notes 'Paid by renewals' and attach them to the notes which are enclosed. Charge the discount on these notes to the Western Bank & Trust Company and advise us so that we can make the proper entries here" (R. 124).

On December 12, 1907, defendant in error wrote Templeton as follows: "With the facts as stated by you in your favor of the 7th inst., and made to us verbally by Mr. Fleming, we shall take pleasure in extending your notes for six months, and hand you herewith renewal notes, dated December 10th, due June 10th, 1908. Please sign one as principal and one as surety and have Mr. Fleming do likewise and

return to us with the statement that they are renewals * * *" (R. 125). They did not comply with the request as to form of signature and defendant in error did not insist but accepted the notes. Defendant in error did not call either Fleming who was living nor Templeton before he died as a witness and their testimony is not in the record. They were his friends.

On May 31, 1907, defendant in error wrote Templeton as follows: "Replying to your favor of the 29th inst., Mr. Talley has handed us list of your depositors and drafts on your bank for the amounts, which drafts have been mailed you for our credit in due course (R. 137). You will notice that several of **your depositors** have drawn for 'savings accounts' and in this connection beg to say that, in each instance **we have advised them to remain with you** and only after their determined threats to move to one of the other Corsicana banks, we have taken them. **Some have taken the advice and remained with you** * * *" (R. 138).

On June 14, 1907, another draft was sent by plaintiff in error to Fleming and Templeton for $769.41, and later endorsed by them in their firm name (R. 145).

Elliott, assistant cashier of plaintiff in error under defendant in error's management, wrote a letter to plaintiff in error's attorney on November 2, 1909, in reply to one written to him on November 1 (R. 164), that "it is my recollection the notes you refer to of **Fleming & Templeton** to the Corsicana National Bank were taken up; however, **the records of the Corsicana National Bank no doubt show the entire transactions,** to which I respectfully refer you" (R. 165).

It appears from George T. Jester's testimony that it was necessary to make the loan or loans evidenced by the notes of June 10, 1907, in order to get the deposits of Fleming and Templeton transferred to the plaintiff bank. (R. 60). And, it further appears from defendant in error's answer that the real consideration for the arrangement between the bank and Fleming and Templeton which was consummated on June 10, 1907, was the plaintiff's liquidation of the private bank of Fleming & Templeton at Corsicana, which was thought profitable to plaintiff. (R. 14). The negotiations therefore must have been pending, and matured into an agrement or contract, before the liquidation of the bank of Fleming & Templeton was intrusted to the bank, as the contract for the loan was an incident to the contract between the

firm of Fleming & Templeton and the bank, for the bank to liquidate Fleming & Templeton's Corsicana bank. Now the record shows that on May 31, 1907, Fleming and Templeton, through their cashier, Harold Talley, wrote a general letter to each of their depositors announcing their decision to close their office at Corsicana, that they had turned over to Corsicana National Bank the account of such depositors and that the balance due by them to the depositor had been paid into, and placed to their credit by, the Corsicana National Bank (R. 129-130). Manifestly the firm was in existence on May 31, 1907, and the loan must have been negotiated prior to that time. We find, therefore, a joint necessity for the money, a joinder in the signature of the notes, joint payees in the check remitting the money borrowed, a joint use of the money, a joinder in the signature of the renewal notes, a joint consideration for the loan in the joint good will, passing to the bank through the liquidation of the Corsicana business, and the discount for the renewal notes charged to the joint account of Fleming & Templeton and remitted in one check.

The comptroller's letter of May 20, 1907, 21 days before the loan was consummated shows that the bank, then under the management of the defendant

in error, had been recently examined and three excessive loans found therein. (R. 106). How long they had been there the record does not show. The smallest of these was $20,800. No doubt the bank examiner had called attention to these excessive loans because the comptroller wrote the bank demanding that the loans shown by this examination to be excessive must be immediately reduced within the statutory limit (R. 106). Eleven days after this examination the arrangement for the $30,000 had been completed. The negotiations probably were conducted in the interval between May 20 and May 31.

The conviction is irresistible that the $30,000 was in substance loaned to Fleming & Templeton jointly; the facts evince that the suggestions in the correspondence, and in the talk of defendant in error, that Fleming sustained the relation of principal on one note and that Templeton was surety on it and that Templeton was principal on the other note and Fleming surety as to it, were but futile attempts to obscure the real nature of the transaction and to evade the prohibition of section 5200. The statute conditions the real act and can not be made to stand aside by fanciful distinctions nor by uncandid mental reservations. Substance, not color, is material and the jury could look through the unreal to reality. The jury may always disregard camouflage.

Point 3. When the court refused to charge the jury peremtorily in its favor he should have given the tenth special charge requested by plaintiff in error because the state of the testimony was such that the jury would have found that on January 11, 1910, when the bank acquired the Fleming and Templeton notes from the loan company as part payment for the Corsicana Cotton Mill, this mill was reasonably worth, in addition to the $35,000 note which the loan company executed in part payment for it, as much as the principal and interest of the Fleming and Templeton notes after crediting them with the value of the security consisting of Fleming Ranch & Cattle Company stock.

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Plaintiff in error's requested charge No. 10 follows:

"If you believe from the testimony that the $30,000 loaned by the plaintiff on June 10th, 1907, was loaned to a partnership composed of Fred Fleming and D. A. Templeton; and you further find from the testimony that on January 14th, 1910 the Corsicana Cotton Mill property was of the reasonable market value of a sum equal to or more than the principal and interest at that time of the notes of Fred Fleming and D. A. Temple-

ton and $35,000 agreed to be paid by the Corsicana National Land Loan Company, to the plaintiff in addition to the surrender of its claim against the plaintiff on account of said notes, you will return your verdict herein in favor of the plaintiff." (R. 176).

Exception was duly reserved to the failure of the court to give this charge. (R. 178-179).

The Fleming & Templeton notes bear ten per cent per annum interest after maturity (R. 127-128). The interest was paid to June 10, 1908. (R. 46). From June 10, 1908 until January 11, 1910, the interest is $4,758.33. The net realization on the Fleming Ranch & Cattle Company stock amounts to $9,149.64. None of this was secured before January 11, 1910, as the first payment was on February 17, 1911, but we will assume that the stock of the Fleming Ranch & Cattle Company was worth on February 11, 1910, the net amount realized from it through the liquidation. Calculating the interest from June 10, 1908, to January 11, 1910, and adding the interest to the principal, the sum due on the Fleming & Templeton notes on the last named day was $34,758.33. Deducting therefrom the value of the Fleming Ranch & Cattle Company stock, $9,149.64, we get as a result $25,608.60, which was paid by the plaintiff to the loan

company as restitution, if the value of the Corsicana cotton mill on that date equalled $60,608.69. This last sum is arrived at by adding $25,608.69 to the $35,000, the amount of the purchase money notes executed to the bank by the loan company.

The agreed valuation placed by the parties on the mill was $65,000 (R. 93-73), but, of course, this agreement is not binding on the defendant. The defendant in error, however, was thoroughly familiar with the value of the mill. About June 22, 1908, the mill owed the bank $68,000. (R. 131). This was called to the defendant in error's attention as an excessive loan and he and other directors on June 29, 1908, wrote the comptroller that the bank would take over the plant and that they believed there would be no loss. (R. 135-136). Value is a matter of opinion. The testimony of plaintiff in error's witnesses was not opposed by any witness for the defense. Defendant in error was examined at great length as a witness and no where in his testimony does he support the allegation of the answer that the mill was not worth more than $35,000; neither he nor any witness for him swore to less value for the property than that placed on it by plaintiff in error's witnesses. Nor could he have so testified with good grace because when Heflin bought into the bank around May 15

to May 30, 1909, the defendant in error told him that the bank was carrying the mill at $65,000, and that he thought it was worth $100,000. (R. 74). There was no testimony of a lessening in value in the mill's assets or injury to its physical property (R. 91). The defendant in error, while he was vice-president of the bank and in active charge of it, signed a letter to the comptroller, dated March 11, 1908, in which he stated:

> "Now, referring particularly to the estimated loss of $42,000 on account of Corsicana Cotton Mills, we beg to say that this is the only account which now stands on our books as an excessive loan and we are of the opinion that no loss will be sustained by this bank on that account.
>
> "We think it proper to enclose you herewith a financial statement rendered by this concern to us of date February 29, 1908, which fully sets out its financial condition. We believe a conservative estimate of the value of the quick assets of this concern, consisting of cotton products and the like, will, when sold, amount to at least $80,000. This concern owes about $150,000. Its plant is in excellent state of repair, modern and fully insured. It has cost about $150,000, and ought, under the most extreme conditions to bring not less than from $90,000 to $100,000. Besides this plant can be and has been operated profitably." (R. 114-115).

Nearly a year before this letter was written, the bank, under the defendant in error's management was carrying a loan for the Corsicana Cotton Mill of $52,985.85 (R. 106), which he increased to $81,-281.79, over the continued protest of the comptroller. (R. 131).

G. J. Heflin testified that at the time the mill was sold to the loan company, in his opinion, it was cheap at $65,000. At the time he testified he was president of the Corsicana Cotton Mills. (R. 73).

J. A. Thompson, president of the bank at the time the bank sold the mill to the loan company, swore that it was worth $65,000. (R. 90). It is true that under a severe cross examination this witness testified that a bank had no business with a cotton mill, that he was anxious to get rid of it and that the loan company did afterwards sell it for $50,000. At the time his testimony was taken he said that he thought the mill was worth $100,000 (R. 94). It is significant that when Thompson succeeded defendant in error in the management of the bank the mill was being carried on the books of the bank as an asset at $65,000. (R. 97). There is no testimony tending to show that the mill was of a less value than $65,000 at the time of the sale other than the efforts of the bank to convert the mill into money under pressure

from the comptroller, and the fact that the loan company afterwards sold it for $50,000. The sale of such property along in February or March 1911, more than a year after the loan company bought it was slow, (R. 92-93), and plaintiff in error, which was its creditor, and the loan company, were anxious to realize on the mill. When Thompson's testimony was taken, late in the year 1911, he swore that the mill was then worth $100,000. (R. 94), and the testimony of Heflin given about the same time shows that he was then president of the mill and that it was in operation and had been for some time and that it originally cost between $135,000 and $150,000, and that the corporation was capitalized for $100,000 (R. 73-74).

Point 4. Indulging the conception that the bank and the loan company were separate entities an obligation rested on the bank to compensate the loan company for the money which the bank had taken in exchange for the insolvent Fleming and Templeton notes. The claim was one which could have been enforced through litigation, but whether or not this is true the moral duty remained, and the discharge of such a claim can not be deemed voluntary.

The court refused the plaintiff in error's requested charges numbered 4, 5, 6 and 7, and charged peremptorily in favor of the defendant in error. Exceptions were duly reserved.

Requested charge No. 4 follows:

"The testimony in this case shows without contradiction that on the 12th day of January, 1908, the plaintiff and the Corsicana National Land Loan Company, a corporation, had stockholders in common, that is to say each stockholder in each of the corporations owned the same proportion of stock in the other corporation, and there was no stockholder in either corporation who was not also a stockholder in the other corporation. At said time the plaintiff and the said Corsicana National Land Loan Company also had common directors, that is to say each director in the plaintiff was also a director in the said Corsicana National Land Loan Company, and each director in the Corsicana National Land Loan Company was also a director in the plaintiff.

It is also uncontradicted in the evidence that on the 12th day of February, 1908, there was no officer of Corsicana National Land Loan Company who was not also an officer in the plaintiff.

Under these uncontradicted facts I charge you that it was in law impossible for the plaintiff and Corsicana National Land Loan Company to con-

tract with each other, and, therefore, the purported and attempted contract entered into between the plaintiff and Corsicana National Land Loan Company on February 12, 1908, whereby an attempt was made to sell and transfer without recourse the Fred Fleming and D. A. Templeton notes from the plaintiff to the Corsicana National Land Loan Company and to transfer from the Corsicana National Land Loan Company to the plaintiff $30,000 of a credit which the said Corsicana National Land Loan Company had on the books of the plaintiff, were entirely null and void and had no effect in changing the ownership of the said Fred Fleming and D. A. Templeton notes from the plaintiff to Corsicana National Land Loan Company, nor did said transaction have any effect in extinguishing the credit then owned and possessed by Corsicana National Land Loan Company on the books of plaintiff bank, and you will, therefore, disregard all testimony relating to the purported transfer of the said notes from the plaintiff to the Corsicana National Land Loan Company on February 12, 1908." (R. 169-170).

Requested charge No. 5 follows:

"The testimony in this case shows without contradiction that on the 12th day of January, 1908, the plaintiff and the Corsicana National Land Loan Company, a corporation, had stock-

holders in common, that is to say each stockholder in each of the corporations owned the same proportion of stock in the other corporation, and there was no stockholder in either corporation who was not also a stockholder in the other corporation. At said time the plaintiff and the said Corsicana National Land Loan Company also had common directors, that is to say each director in the plaintiff was also a director in the said Corsicana National Land Loan Company, and each director in the Corsicana National Land Loan Company was also a director in the plaintiff. It is also uncontradicted in the evidence that on the 12th day of February, 1908, there was no officer of Corsicana National Land Loan Company who was not also an officer in the plaintiff.

Under these uncontradicted facts I charge you that it was in law impossible for the plaintiff and Corsicana National Land Loan Company to contract with each other, and, therefore, the purported and attempted contract entered into between the plaintiff and Corsicana National Land Loan Company on February 12, 1908, whereby an attempt was made to sell and transfer without recourse the Fred Fleming and D. A. Templeton notes from the plaintiff to the Corsicana National Land Loan Company and to transfer from the Corsicana National Land Loan Company to the plaintiff $30,000 of a credit which the said Corsi-

cana National Land Loan Company had on the books of the plaintiff, were voidable: and it further appears from the uncontroverted evidence in this case that prior to the institution of this suit the plaintiff and the Corsicana National Land Loan Company avoided said transaction, as they had a right by law to do; and you will, therefore, in your deliberations disregard all testimony before you in reference to the transactions between the plaintiff and the Corsicana National Land Loan Company which occurred on February 12, 1908." (R. 170-171).

Requested charge No. 6 follows:

"You are instructed that it appears from the uncontroverted testimony herein that the plaintiff, Corsicana National Bank, and Corsicana National Land Loan Company, during all the transactions involved in this suit, had common stockholders who owned stock in each corporation in the exact proportion that such stockholder owned stock in the other corporation, and that this status of the stockholders in these corporations was not changed by the placing, without valuable consideration, of a few shares of the stock in Corsicana National Land Loan Company in the hands of certain persons, in an attempt to qualify these persons to act as directors in said Corsicana National Land Loan Company for the purpose of

bringing about a change in the condition of the directorate of the two companies so that instead of the directors being all in common, a majority of the directors of each company might not be common directors.

You are, therefore, charged that in determining the question as to whether the plaintiff suffered a loss by occasion of the loan or loans made by the plaintiff to Fred Fleming and D. A. Templeton on June 10th, 1907, if you have found that said loan or loans constituted an excessive loan, you will disregard all the testimony which has come before you in reference to the delivery by the plaintiff of the said notes to the Corsicana National Land Loan Company and the redelivery of them to the plaintiff, or any other transaction in respect to them had between the plaintiff and the Corsicana National Land Loan Company, for, in determining the rights of the parties in this case you are authorized to consider that any loss to the Corsicana National Land Loan Company was also a loss to the plaintiff." (R. 172).

Requested charge No. 7 follows:

"You are instructed that the uncontroverted evidence in this case shows that on the 12th day of February, 1908, the Corsicana National Bank transferred to Corsicana National Land Loan Company the two notes signed by Fred Fleming

and D. A. Templeton, then evidencing the indebtedness for borrowed money growing out of the transaction on June 10th, 1907, and received in consideration of said transfer, which was without recourse, the sum of $30,000 from Corsicana National Land Loan Company, then standing to the credit of said Corsicana National Land Loan Company on the books of the plaintiff.

It is further uncontroverted in the evidence that at the time of this transfer and the receipt of this $30,000 by the plaintiff, the said Fred Fleming and D. A. Templeton had become notoriously insolvent and that this fact was known to the plaintiff and to the defendant and to the officers and directors of the plaintiff and of the Corsicana National Land Loan Company, who were the same persons at the time said notes were transferred and said $30,000 so appropriated by the plaintiff.

It is further uncontroverted in the testimony that after said transfer of said notes the defendant, acting for the plaintiff, proved up the claim evidenced by said notes in the bankrupt estate of Fred Fleming, and received in the liquidation of said Fleming bankruptcy 282 shares of the capital stock of Fleming Ranch & Cattle Company, which certificates were taken out in the name of plaintiff.

Under these uncontroverted facts you are charged that the plaintiff was a trustee for Corsicana National Land Loan Company of the prop-

erty and effects of the said Corsicana National Land Loan Company and could not profit from the manipulation thereof, and that when the plaintiff was called upon by the Corsicana National Land Loan Company for an accounting as such trustee in respect of the $30,000 which it had appropriated to its own use of Corsicana National Land Loan Company's assets, the plaintiff was bound to accede to the demands of said Corsicana National Land Loan Company for restitution and had the legal right to make such restitution in any form of valuable consideration.

It further appears from the uncontroverted evidence in this case that on January 14th, 1912, the plaintiff and Corsicana National Land Loan Company agreed that such restitution might be accomplished by the conveyance on the part of the plaintiff to Corsicana National Land Loan Company of property called in the testimony "Corsicana Cotton Mills", in consideration of the $30,000 appropriated by the plaintiff, with interest thereon, and $35,000 of purchase money notes executed by the Corsicana National Land Loan Company to the plaintiff, and that said conveyance was made and the notes of the Corsicana National Land Loan Company executed, and that plaintiff was in possession of the notes executed by Fred Fleming and D. A. Templeton, and was also in possession of the shares of stock of Fleming Ranch & Cattle Company.

You are, therefore, instructed that if you find and believe from the testimony that the said Corsicana Cotton Mills, on January 10th, 1910, was reasonably worth the amount of $30,000, with interest thereon at the rate of 6 per cent from June 10th, 1908, to January 10th, 1910, plus $35,000, you will disregard all the transactions between the plaintiff and the Corsicana National Land Loan Company in determining the rights of the parties herein." (R. 173-174).

The defendant in error testified:

"Up until my associates and myself sold out in the spring of 1909, both the loan company and the bank had the same president and vice-president and directors and Mr. Elliott who was assistant cashier of the bank was secretary of the loan company." (R. 38).

He further testified:

"The bank made a good trade when these notes were sold to the Corsicana Land & Loan Company in February, 1908, securing the face value of the notes in money, and the representatives of loan company were satisfied. When they got a new crowd to run the loan company and under the regime of my successor in the bank, dissatisfaction came. Mr. C. W. Jester, president of the bank, made the transfer to the loan company without recourse. The purpose of the loan company, a

state corporation, was to take such paper as the bank could not handle. It was organized by the stockholders of the bank and paid for out of the earnings of our bank. A special dividend was declared of $50,000, and the checks were distributed written out to the different stockholders of the bank in proportion of stock they held. My recollection is that those checks were made payable or endorsed over by the different stockholders to the subscription stock in this Corsicana Land and Loan Company; it was indirectly the money that came from the $50,000 dividend." (R. 35).

The loan company having been thus organized as a separate corporation, but having common directors and no officer who was not also an officer of the bank, is either a part of the bank and its property that of the bank, or it is a separate corporation distinct from the bank and owns and possesses its own property. If the first conception be indulged, the bank has never received anything on account of the Fleming and Templeton notes except what has come to it through the Fleming Ranch & Cattle Company, a sum amounting to less than one-third of the principal and interest of the notes. Assuming, however, that the loan company is a separate corporation, we have the situation of two corporations with only common directors and officers.

It is difficult for us to conceive how such corporations can make between themselves an enforceable contract, save through ratification by the stockholders of both corporations. But assuming again that the rule is the same as in the case of corporations a majority of whose boards of directors are common, we think it clearly follows from the authorities that when the loan company secured a board of directors, with a majority not directors of the bank, the loan company had the right to avoid the contract whereby $30,000 of its money had been taken in exchange for the Fleming & Templeton notes, for, at the time this exchange was made on February 12, 1908, the failure of the Western Bank & Trust Company, of which Fred Fleming was president and D. A. Templeton was vice-president, had made notorious the insolvency of both Fleming and Templeton. (R. 45). The Western Bank & Trust Company closed its doors on January 15, 1908 (R. 44). After its doors were closed, both Fleming and Templeton were notoriously insolvent. Prior to that time both were solvent, or were so regarded. In November, 1907, Fred Fleming and D. A. Templeton executed a trust agreement to Wm. Doran and Bennett Hill to secure unsecured depositors of the Western Bank & Trust Company and this agreement was published in the

Dallas News, a paper of general circulation throughout North Texas. (R. 45). Under these conditions C. W. Jester, president of Corsicana National Land Loan Company and A. G. Elliott, secretary thereof, respectively at the same time president and assistant cashier of the Corsicana National Bank, drew the check of the loan company on the bank in favor of the bank for $29,400, and wrote in the face of the check that it was for two Fleming-Templeton notes for $30,000, less interest unearned. (R. 163). On the same day the check was paid and that fact was stamped across its face with a rubber stamp. (R. 163). Thus the money of the loan company was taken for insolvent notes.

Changes in ownership of the stock of the two corporations occurred in the interval before January 11, 1910, and resulted in the stockholders meeting held on that date electing a board of directors for the loan company, a majority of whom were not directors in the bank. Then the stockholders and directors of the loan company repudiated the transaction of February 12, 1908, and demanded of the plaintiff the return of the $30,000 with interest. The plaintiff in error agreed to settle the claim by the transfer to the loan company of all the stock and bonds of the Corsicana Cotton Mill Company, carrying the whole inter-

est, for which the loan company, in addition to the surrender of its claim and the Fleming Ranch & Cattle Company stock and the return of the notes, agreed that it would execute to the plaintiff its note secured by the stock and bonds transferred, in the sum of $35,000 (R. 161). This agreement was consummated. (R. 74).

The lack of authority of common directors to make contracts between their principal corporations, and the reason underlying the rule is well stated in Morawetz on private corporations, 2d. edition, volume 1, section 528, which reads:

> "Directors or agents can not represent both parties in making a contract. * * A person who is agent for two parties can not, in the absence of express authority from each, represent them both in a transaction in which they have contrary interests. This rule is based upon the same reason as the rule which prohibits an agent from representing his principal, when his personal interests are opposed to his duty. This principal stipulates for the judgment and skill of his agent, and the latter has no authority to act, when he is not in a position to give the principal the benefit of his best endeavors. It follows, therefore, that the directors, or other agents of a corporation have no implied authority to bind the company by making a contract with another corporation which they also represent.

The rule is thus stated by judge Bland of the St. Louis court of appeals:

"For the reason the directory and chief officers of both corporations are practically identical, the presumption is that the tripartite agreement, as between the two corporations is fraudulent, and hence the assets acquired from the transit company by the United Railways Company, under said agreement, are held by the latter company in trust for the benefit of creditors of the former. But this presumption is not an irrebuttable legal presumption. It is a presumption of fact which may be overcome by clear and convincing proof that the officers and directors acted with impartiality and absolute fairness, so that no advantage was given one corporation over the other in the terms of or in the performance of the contract.

Barrie vs. United Railways of St. Louis, 102 S. W., 1034;

Thomas vs. Ry. Co., 109 U. S. 524;

Sweeney vs. Grape Sugar Co., 8 American St. 97;

Wardell vs. Ry. Co., 103 U. S. 656;

Noyes on Intercorporate Relations, sec. 124, page 195;

Cole vs. Millterton Iron Co., 15 N. Y. S., 851;

Cole vs. Mercantile Co., 30 N. E., 848;

Bicocchi vs. Casey-Swasey Co., 91 Texas, 264.

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Point 5. In determining the legal effect of the transactions between the bank and the loan company once it appears that they are separate and distinct persons with agents who may and do act the facts which will constitute fraud in dealings between ordinary corporations or other persons apply, and these facts are not given complexion by the community of interest of the stockholders.

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The stockholders of the bank and of the loan company took no action transferring the notes into the loan company. When the transaction came before them they directed that arrangements should be made whereby the diminution of the loan company's assets should be made good by the bank, and these directions were put into effect, (R. 156, 150, 93). We think there can be no midway between the conception that common ownership of the beneficial interest in the corporations made a loss to the loan company a damage to the bank, and the one that common ownership could not prevent the avoidance of a contract between them which could be avoided but for such common ownership. If the corporations are one legal unit no avoidance was necessary. If they are two persons in the eye of the law, common ownership of the stock is immaterial.

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Point 6. The LIABILITY of defendant attached when the excessive loan was made, and not first when the notes were taken over by the bank from the loan company. This liability could only be extinguished by the bank receiving in some legal unavoidable form the principal and interest of the notes in money or value, or by estoppel.

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The only plea of estoppel suggested is contained in the paragraph of the answer numbered XI, which was stricken on exception, but the paragraph numbered X pleads that the transaction by which the plaintiff in error took back the notes constituted contributory negligence on the part of plaintiff in error which rendered such loss as it may have suffered a self-inflicted injury such as did not create a liability against the defendant in error. This view is founded on a radical misconception of plaintiff in error's case. The cause of action did not arise in that way at all. The real question is did a voidable sale of the notes, after it was avoided, discharge the liability of the defendant in error. This question admits of only a negative answer. The liability fixed by the statute on defendant in error is personal. But he had no personal connection with the transactions between

the bank and the loan company. His relation to these acts was as director and officer of the corporation. There was no necessity for consulting him when the time came to avoid the legal wrong which the loan company had suffered, for then he was neither officer nor director. He had paid no money or value to either of the parties to the voidable sale, was not a party to it, nor was the contract made for his benefit. The transaction as to him was **res inter alios acta.** True, he was to be affected by the righting of the legal wrong and it may be true that he sold his stock in the corporations for a less price than he otherwise would, had he been mindful of the rights of the corporations **intersesse** and of his liability for possible damage. He knew all the facts, and when he sold might have protected himself by indemnity or other contract with his vendees. He did not sell to the bank, nor did the bank in anywise represent to him, that its policy in respect to this transaction would not be different after he ceased to dominate it. Having failed to protect himself by contract, the law will not protect him at the sacrifice of plaintiff in error's legal right.

2. Elliott on Contracts, section 1421;
Gulf Compress Co. vs. Harris Cortner & Co., 158 Ala., 343, 48 So. 477, 24 L. R. A., (N. S.) 399;
Bicocchi vs. Casey-Swasey Co., 91 Tex., 264.

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Point 7. The court should have instructed the jury to find for the plaintiff in error and in a definite sum because the ultimate material facts were not controverted and entitled plaintiff in error to a verdict.

Plaintiff in error's first requested charge (R. 167) was a peremptory instruction based on the theory, (a) that section 5200 covered the loan or loans, whether one or two; (b) that the transactions between the two corporations were immaterial to defendant in error's liability; (c) that the measure of damages was the amount loaned with interest, after crediting it with the realizations from the Fleming Ranch & Cattle Company liquidation, with interest; (d) that the Corsicana Cotton Mill was worth the principal and interest of the Fleming and Templeton notes, (less the value of the collateral stock) plus the purchase money notes of $35,000; (e) that the defense of limitation was not proved, and that reasonable minds could not differ under the proof on the propositions of fact.

We have discussed these several phases except the measure of damages and the statute of limitations.

The loaning power of the bank to any person, company, corporation or firm was $20,000 (R. 23). Section 5239, under the terms of which this suit was brought, appears on page 6 of this brief.

The violation of this section consisted in making the loan or loans to the amount loaned and the damage sued for was sustained in consequence of this violation. The answer to the suggestion that only the excess above $20,000 should be considered, because $20,000 might be loaned without violating the section, is that $20,000 was not loaned and therefore a legal sum was not loaned, the sum borrowed exceeding $20,000. Liability or liabilities of $20,000 would not have constituted a violation, it is true, but the court under familiar principles cannot separate legal and illegal portions of a transaction resting on the same consideration to save the legal part, and no more can this transaction be resolved into one loan of $20,000 and another of $10,000 in order to reduce the **quantum** of defendant in error's responsibility. If a lawful loan is made the **loss** falls on the **bank**; if an unlawful liability is incurred the **loss** falls on the **officer or director.** There is no apportionment of the damage from an unlawful extension of credit on supposed equitable principles. The quality

of the transaction as in accord with the statute or in opposition to it, determines whether or not the officer or director is ultimately liable to the banking association. We think it would be unprofitable to discuss what might have been done. The court can deal only with what was done and its legal consequences.

Plaintiff in error's requested charge No. 8 which was refused was drawn on the theory above suggested and reads as follows:

> "You are specially instructed that if you find for the plaintiff herein, the measure of plaintiff's recovery, under the uncontradicted evidence, is the sum of $30,000 with interest thereon at the rate of 6 per cent per annum from June 10th, 1908 to this date, less the sum of $6,913.64 with interest thereon to this date at the rate of 6 per cent per annum from February 17th, 1911, and less the sum of $336 with interest thereon from June 27, 1911, to this date at the rate of 6 per cent per annum, and less the sum of $1900 with interest thereon at the rate of 6 per cent per annum from October 17th, 1911 to this date.
>
> But the court refused to give the said charge as requested, to which action of the court, then and there in open court, and, before the jury retired, the plaintiff excepted." (R. 175).

If this requested charge is wrong as regards the correct measure of damages, then the court should have given the alternative request which plaintiff in error asked after the court had refused the charge based on the foregoing conception of the measure of damages.

This is requested charge No. 9, and reads as follows:

> "You are instructed that if you find for the plaintiff in this case, the measure of the plaintiff's recovery is the sum of $10,000 with interest thereon at the rate of 6 per cent per annum from the 10th day of June, 1908 to this date.
>
> But the court refused to give said charge as requested, to which action of the court, then and there in open court and before the jury retired, the plaintiff excepted." (R. 175).

If the loans are to be apportioned for the protection of defendant in error, then the collections from realization on the assets in liquidation of the Fleming Ranch & Cattle Company should be applied on the first $20,000, as the sum thus realized does not amount to so much, (R. 5, 23) leaving the last $10,000, with interest, a clear loss. Certainly if the loan had been for only $20,000 the collections on it would have reduced the loan by their amount and an appli-

cation more favorable to the defendant in error cannot find support in the facts, nor be plausibly urged before this court. In view of another trial, obviously this question should be decided on this writ of error.

The period of limitation is two or four years. The Texas statute follows:

"Article 5687.—There shall be commenced and prosecuted within **two years** after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

"1. Actions for trespass for injury done to the estate or the property of another.

"2. Actions for detaining the personal property of another, and for converting such personal property to one's own use.

"3. Actions for taking and carrying away of the goods and chattels of another.

"4. **Actions for debt where the indebtedness is not evidenced by a contract in writing.**

"5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the

several articles charged shall be particularly specified, and limitations shall run against each item from the date of such delivery, unless otherwise specially contracted.

"6. Action for injury done to the person of another.

"7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured."

"Article 5688.—There shall be commenced and prosecuted within **four years** after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

"1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

"2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

"3. Actions by one partner against his copartner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together."

"Article 5690.—**Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued, and not afterward.**"

"Article 5702.—If any person against whom there shall be cause of action shall be without the limits of this state at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the state, and the time of such person's absence shall not be accounted or taken as a part of the time limited by any of the provisions of this title."

Plaintiff in error's requested charge No. 3 which was refused is as follows:

"You are instructed that it appears from the uncontradicted evidence herein that plaintiff's cause of action against the defendant did not accrue before December 10, 1907, and it further appears by the uncontradicted evidence that this suit was instituted at law on the 8th day of January, 1910, and in equity on the 4th day of February, 1910; and it further appears from the uncontroverted testimony and admissions of defendant that between the dates of December 10, 1907, and February 4th, 1910, he was absent from

the state of Texas more than two months; so that you are instructed that plaintiff's suit herein was instituted before the bar of limitation cut off the plaintiff's right to prosecute its cause of action and suit herein declared on against the defendant.

But the court refused to give the said charge as requested, to which action of the court, then and there in open court, and before the jury retired, the plaintiff excepted." (R. 168-169).

Doubtless the four year period applies because there is no specific provision for this species of action, and if four years is the appropriate period, no question of limitation arises for the suit was commenced within four years after the original notes were taken, and the four year period is not pled.

But assuming, for the purpose of the argument, that the two year period is applicable, the facts are conclusive. The notes first matured on December 10, 1907. The makers were then solvent and no loss had occurred. (R. 26). They failed shortly thereafter but we adopt the due date of the first series of notes as the date of the accrual of the cause of action.

The rule is thus stated by the court of appeals of Maryland in a case arising under section 5239. "Where the act complained of might or might not be injurious, the cause of action cannot be considered

as accruing until the injury had developed, and until then the statute does not begin to run." Emerson vs. Gaither, 64 Atl. 32.

In 1909 defendant in error was out of the state a month or five weeks (R. 29). On January 5, 1910, he again left the state and returned about the middle of February, and on the same day was served with process in this suit, (R. 29-30). In 1908 he was absent a month or six weeks, (R. 30). From December 10, 1907, to February 14, 1910, is two years and sixty-six days. He was absent 30 days in 1908, at least 30 days in 1909, and 39 days in January and (prior to the 14th) February, 1910; a total of 99 days during which the statute did not run.

Besides, the proof shows that defendant in error dominated the bank until in May, 1909. (R. 48). During the period prior to this date the statute did not run.

National Bank of Commerce vs. Wind, 84 Fed., 15;

2 Perry on Trust, 2nd. ed. section 864;

2nd Pomeroy eq. jur., section 1089;

Poland vs. Henry, 64 Tex., 542;

McCord vs. Nabours, 101 Tex., 494;

Blount vs. Bleker, 35 S. W., 863;

American Cotton Co. vs. Frank Heirman & Bro., 83 S. W., 845;

Jacobs vs. Shannon, 21 S. W., 386;
Bank of Hartford vs. Watterman, 26 Conn., 323;
Winters vs. Sowles, 31 Fed., 5;
Well vs. Graves, 41 Fed., 468;
Cockrill vs. Butterworth, et al., 78 Fed., 406;
Power vs. Munger, 52 Fed. 710;
Briggs vs. Spalding, 141 U. S., 146;
Cockrell vs. Adeles, 86 Fed., 505;
Cooper vs. Hill, 94 Fed., 582;
Stephens vs. Overstolz, 43 Fed., 771;
Warner vs. Penoyer, 91 Fed., 587;
Brown vs. Farmers & Merchants National Bank, 88 Tex., 265;
Zinn vs. Baxter, 65 Ohio State, 341.

For the errors committed on the trial, illustrated by the propositions herein stated and discussed, the circuit court of appeals should have reversed the judgment and remanded the case, and for such relief the plaintiff in error respectfully prays this court.

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IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM.

No. 970.

CORSICANA NATIONAL BANK,
Plaintiff in Error,

v.

SAMUEL WISTAR JOHNSON,
Defendant in Error.

Error to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The statement of the case as made by plaintiff in error, except as here modified, may be accepted as a sufficient outline of the nature of the case, its result in the court below and the questions presented here.

On June 10, 1907, plaintiff in error discounted two notes of that date for $15,000.00 each, both payable six months after date to the order of plaintiff in error, with ten per cent interest from maturity until paid, and containing other provisions not now material. One was signed D. A. Templeton, Fred Fleming, and the other was signed Fred Fleming, D. A. Templeton (R. 125-126). Plaintiff in error contends that the two notes evidenced one loan of $30,000.00

to the firm of Fleming and Templeton, composed of Fred Fleming and D. A. Templeton, or to Fred Fleming and D. A. Templeton, jointly. Defendant in error contends that said notes evidenced two loans, of $15,000.00 each, one to Fred Fleming, evidenced by the note signed Fred Fleming, D. A. Templeton, and the other to D. A. Templeton, evidenced by the note signed D. A. Templeton, Fred Fleming, and that the last signer of each of said notes was the surety of the first signer.

These notes, when due, were renewed by similar notes (R. 127-128).

The making and renewing of said loans, the creation and organization of said Corsicana National Land Loan Company, and the transfer of said notes to said Company, were all acts of said Bank, authorized and sactioned by its directors and officers, and while defendant in error participated in said transactions, he did so simply in discharge of his duties as one of the representatives of the Bank and incurred no greater liability therefor than any other representative of said Bank so participating. Said transactions were in no sense peculiarly the transactions of defendant in error, as is to be inferred from plaintiff in error's statement. The details of said transactions, so far as necessary, will be hereafter called to the attention of the Court in their appropriate connections. The court having instructed the jury to find for defendant in error, nothing is involved here except the correctness of such instruction.

Answer to Point I.

Defendant in error challenges the correctness of Point

I as a legal proposition and states the following as the correct legal proposition presented in this case:

(a) The liability of a surety on a note given to a National Bank for money borrowed by the principal from the Bank is not to be included in determining the surety's liabilities to the Bank under Section 5200, United States Revised Statutes.

Section 5200 is set out in full on pages 15 and 16 of plaintiff in error's brief, and so far as necessary to repeat here is as follows:

> The total liabilities to any association of any person, for money borrowed, shall at no time exceed one-tenth part of the amount of the capital stock of such association, actually paid in and unimpaired, and one-tenth part of its unimpaired surplus fund. * * * But the discount of bills of exchange drawn in good faith against actual existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed."

The question presented is, **"Is the liability of a surety on a note given a National Bank for money loaned by the Bank to his principal a liability for money borrowed under Section 5200?"**

The liability dealt with by this section is a liability for money borrowed and unless the liability is one for money borrowed it is not within the section.

Plaintiff in error devotes much of its argument on this

point to an attempt to show that the surety's liability in this case was absolute and not contingent, and further, that Secion 5200 includes contingent as well as absolute liabilities.

It cites authority to show that liability under Section 5211 of the same act includes a contingent liability.

Section 5211 requires National Banks to make sworn reports to the Comptroller of the **resources and liabilities** of the Bank on a given day. Liabilities under Section 5211 are unrestricted and the purpose of the section, viz: to show the financial condition of the Bank, was one which necessarily included all liabilities, whether absolute or contingent. How the court could have arrived at any other conclusion than that liabilities under Section 5211 included all liabilities, whether absolute or contingent, is difficult to see. It likewise cites authority to show that the liability of the surety in this case is absolute. The question here is not whether the liability of the surety is absolute or contingent, but is it the liability of a borrower?

The contention of defendant in error is that the liabilities dealt with by Section 5200 are the liabilities "of any person, for money borrowed," by him. That it is not always to be determined from the positions of the parties as they appear on the face of the paper who the borrower is. That the borrower is the person to whom the Bank advances the money on the faith of the paper.

Paintiff in error contends that this construction imports into the statute after the words "for money borrowed," the words "by such person," etc., and that it is not per-

missible so to do. It is not permissible to import words into a statute that the legislature has not put there, but it is both permissible and necessary for the court to say what the legislature meant by the words it did put in the statute, and then to express that meaning in the clearest, most definite language at its command. This is not to add words to the statute, but to say what the words of the statute mean.

The meaning of the statute in question is not always obvious. When applied to its subject matter its meaning is not always evident on the surface. It provides that the **"total liabilities to any association of any person,"** etc., **"for money borrowed,"** shall at no time exceed a certain amount. It does not say **from whom** the money is to be borrowed, nor by whom; that is left to construction. It further provides that the discount of bills of exchange drawn against actual existing values and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed. This is to provide that the money received from the Bank by the person drawing the draft or discounting the paper shall not be money borrowed within the act. Discount is here used in the sense of the money received on the discounting transaction, for it is provided that **the discount** shall not be considered **money borrowed.** But what is the situation brought about between the Bank and those liable on the paper so discounted, other than the person discounting the paper? On this subject the statute is silent. If one borrows money from a bank and gives his note therefor, there is no room for interpretation; he is liable thereon

for money borrowed. If one discounts notes belonging to him to a Bank, the money he receives therefor is not borrowed and there is no room for interpretation here. But if A borrows money from the Bank and gives his note therefor, signed by B as his surety, is B's liability thereon a liability for money borrowed within the statute; or if A borrows money from B and gives his note therefor, which note thereafter becomes the property of the Bank, is A's liability thereon a liability for money borrowed within the statute? These two questions are not answered by the express language of the statute, and their correct answers involve a construction of the statute.

The latter of the above suggestion is not answered by saying that the last clause of the section makes it lawful to discount notes to the Bank whether the amount of the discount is within or beyond the Bank's lending limit. That clause of the section deals with the situation brought about between the Bank and him who receives the discount, not between the Bank and the prior parties to the paper discounted. And if the language of the first clause of the section is to be given the literal meaning contended for by plaintiff in error, then A's liability on the note in the case last put is a liability within the statute, for it is a liability to the Bank, the Bank owning the paper, and it is a liability for money borrowed by A from B.

In construing a statute, all parts must be given effect and harmonized, if that be possible.

If the literal construction cotnended for by appellant

is to be given the first clause of Section 5200, then the meaning of such first clause as so construed must be kept in mind in construing the last clause, and this clause must be so construed as to harmonize with the first, if that can be done.

The last clause provides that money obtained as the discount of certain bills of exchange and commercial or business paper is not to be considered money borrowed. This fixes the status of the matter between the Bank and the person discounting the paper, but makes no attempt to deal with the liability of the other parties to the paper.

A having loaned B $15,000.00 and taken his note therefor, desires to discount the note to a National Bank, whose lending limit is $10,000.00. If the Bank takes the note and pays A $15,000.00 for it, it is not making a loan, because of the provisions of the last clause of Section 5200, but by acquiring the note, it will have B's liability for money borrowed in excess of $10,000.00, and this it cannot do under the clause of the section literally construed as contended for, because B's liability under this construction is for money borrowed—not borrowed from the Bank, it is true, but nevertheless borrowed—and according to appellant, the words "from the Bank" cannot be imported into the statute, and the liability being for money borrowed is limited under the first clause to $10,000.00. This would leave the last clause so interpreted a broad field of operation and would not subject such interpretation to the criticism that it violated the language of the last clause or practically nullified it. This, of course, is not the oper-

ation of the statute in such a case, and we think this is universally conceded.

But if the Bank can take such note properly, why can it do so? Not because the last clause of the section says it can, for it does not say so, but because the first clause of the statute deals only with loans made by the Bank and with the liability of the borrower, and not with the liability of any other party to the paper. In other words, because plaintiff in error's construction is erroneous.

Again, the last clause of the section distinctly shows that it was not the purpose of the section to limit the amount of paper a Bank might hold, on which the same individual was liable, for if defendant in error is correct in his view of the statute, the Bank might acquire by discount paper of one individual greatly in excess of the sum it might lend such individual. The policy of the statute is but to prevent the Bank from lending such individual more than such ten per cent. The limitation is not on the liability, but the loans.

That Section 5200 deals with the liability of the borrower only and not with that of any other party to the paper held by the Bank, and who is a borrower under the section, is strongly indicated in its last clause. This provides that money obtained by one on the discount to the Bank of certain drafts and paper therein mentioned is not money borrowed. It does not attempt to deal with the liability of any party to the transaction, except that of him who obtains the money—who discounts the paper.

The last clause takes out of the operation of the first clause transactions which would have been covered by it, but for the last clause. If under the last clause A actually owns the notes of B for an amount greater than the Bank could lend B, A can discount the notes to the Bank, and this permission is given by the statute by saying that the money obtained is not borrowed, and what is the same thing, that A in such case is not a borrower. This shows that he who obtains money from the Bank on the paper is the borrower. It further shows that the law is dealing with no other liability than the borrower's, for it makes no provision whatever as to B's liability, and does not provide that B's liability shall not come within the first clause. This provision is entirely logical if the only liability dealt with in the first clause is the borrower's, for if the first clause deals with the borrower's liability only, then the provision of the last clause that he who discounts is not a borrower takes the discounter out of the statute; but if the first clause deals with the liability of all parties to the paper, then the provision that he who discounts is not a borrow is incomplete and leaves the statute open to construction as to the status of the paper discounted as between such other parties and the Bank. If the legislature in the first clause is dealing only with the liability of the borrower and desires to take certain transactions out of the statute, the most natural and logical way to do so is to say that the transactions do not constitute a borrowing. But if it is dealing in the first clause with the liabilities of all parties to the paper and desires to except certain transactions, then the natural and logical way to do this was to have said that the

liability of no party to the discounted paper was to be treated as a liability for money borrowed under the section. Congress did not say this, and we think omitted to say this designedly, and for the reasons indicated.

Plaintiff in error attempts to avoid the force of above suggestions by saying that the discounting of the drafts and paper mentioned in the last clause would be a purchase and not a loan, and therefore there was no necessity for the last clause. This is practically to nullify it and make it meaningless, and in the absence of something in the statute compelling it, is not a permissible construction.

It is true, that the Comptroller treated the loans in this case as one and therefore excessive, but it does not appear that he was advised of the facts further than from the face of the paper. Neither does it appear that he was a lawyer or reached his opinion upon legal advice, or in accordance with any established view in that department.

The District Judge and Circuit Court of Appeals in this case took a different view, with all the facts and details before them, and after mature consideration, both of the law and the facts, and further than that, the same view is taken by Pratt's Digest of the National Banking Laws, a book of recognized authority on the interpretation of the National Banking Laws, and perhaps in more universal use among National Banks than any other book on the subject. This book has been revised from time to time for some years by Mr. John B. Crawford of the New York bar, for several years legal counsel to the Comptroller of the Currency, draftsman of the Negotiable Instruments Law now

in force in many states of the Union, and an authority on commercial and banking law. This authority, at pages 119-120 of the Revised Edition of 1914, has the following to say on the subject under discussion:

> "Numerous questions arise under this section which cause bank officers much perplexity. A question of frequent occurrence is, whether a loan may be made to a person who is already an endorser on paper discounted by the bank to the amount of one-tenth of the capital stock? It is quite clear from the language of the section that where one negotiates paper actually owned by him the liabilities of none of the parties to such paper are within the meaning of the provision. It has no more application to the maker or to the prior endorser than it has to the person negotiating the paper. Now, are the liabilities of the sureties included when the paper is accommodation paper? It is to be observed that the liabilities to which the law refers are for money borrowed. But the endorsers are not borrowers, and their liability, such as it is, is merely contingent. There does not appear to be anything in the spirit or intent of the law which would require the prohibition to be applied in the case of any person other than those to whom the loans are made. If it applied to the sureties as well, then the Bank could not lawfully take any paper, however numerous the parties thereto, if it, at the time, held paper to the amount of one-tenth of its capital stock, on which the name of any one of those patries appeared, and notwithstanding, moreover, that on the paper already held by the Bank there might be many other and different sureties besides this one. We do not believe that any view of the law which could lead to such a conclusion would be sustained by the courts.

> "But it is to be remembered that the question, who is the borrower? is not always to be determined from the positions of the parties as they appear on the paper. The borrower may be the maker, or he may be the endorser. It is the person who negotiates the paper with the Bank, who procures the money upon it, that is the borrower, irrespective of whether he appears thereon as endorser or guarantor or maker."

The construction above contended for by defendant in error gives to every part of the section force and effect, makes one harmonious whole and leads to no unreasonable results. The construction contended for by plaintiff in error makes the law obscure and difficult and leads to results it cannot be believed were ever intended by Congress. One of them is illustrated by the case before the Court. If the Bank had loaned to Templeton $15,000.00 and taken his individual note therefor, and to Fleming $15,000.00 and taken his individual note therefor, no question could have been raised, because its lending limit to one person was $20,000.00. The transaction had was exactly this, except that Templeton became Fleming's surety and Fleming Templeton's. Adding additional security to each of said notes has made both illegal. Again, on the same construction, leave Templeton and Fleming off as mutual sureties and put on both notes as surety one worth many times $30,000.00. Until such surety was put on the notes were good; they are, with him illegal, because his total liabilities for money borrowed are then $30,000.00. Could this have been the intention of Congress? Again, suppose the notes of Fleming and Templeton, respectively, had been the indi-

vidual notes without surety, and a man of great wealth for some consideration of value had guaranteed their payment. What would have been the situation under the law? His liability would have been to the Bank; the notes were for money borrowed, and they would in the aggregate have exceeded ten per cent of the capital and surplus of the Bank. Under plaintiff in error's construction, the transaction would have been contrary to the statute. It would not have been unlawful as matter of fact, and for the simple reason that the liability of the guarantor was not a liability for money borrowed, merely because his liability was on a note given by his principal for money loaned such principal. A construction leading to such results is of necessity erroneous.

The fact that the department of the Comptroller of the Currency considered the loans in this case excessive is of no value in reaching a proper construction of Section 5200, not only for the reasons hereinbefore suggested, but because it does not appear that such view was a fixed interpretation of such department, and anything more than the expression of an individual opinion; and because it does not appear on what grounds such opinion was based. The record in this case fails to show whether the writers in question reached this conclusion that said loans were excessive because a loan of $30,000.00 to Fleming and Templeton jointly or because the liability of a surety is a liability within Section 5200.

(b) It is distinctly shown by all the evidence that the officers of this Bank did not understand said loans to con-

stitute excessive loans and did not understand that Section 5200 covered the liability of a surety.

The Appellee testified:

"I knew at that time that the Bank could not loan to any individual, firm or corporation, or association of persons, an amount in excess of the $20,000.00." (R. 31, 25.) "I was familiar at that time with the banking laws as to limitations on loans, and either of the $15,000.00 loans, either to Templeton without Fleming's name as security, or to Fleming without Templeton's name as security, would have been within the limitations of the law." (R. 39, 34.) "I have never known of any action in my banking experience from observation or hearsay by the department at Washington on account of that character of loan. I have never heard of any suit by a stockholder, or by the Bank itself, against any officer or director because of a loss growing out of such loans." (R. 43.)

GEORGE E. JESTER, cashier of the Bank, testified: "I am familiar now, and was familiar at the time of the loans to Felming and Templeton, with the provision of the National Banking Law which inhibits loans to one man in excess of ten per cent of the capital stock and surplus, but I think that statute would not prohibit a man from endorsing beyond that limit." * * * "I have never known, except in this suit, of the right being questioned to loan a man more than ten per cent if it was secondary liability." (R. 52.)

C. L. Jester, County Judge and director (R. 57), testified:

"I do not think the board of directors regarded that as an excess loan. While I never investigated it as a lawyer, I was under the impression that it was not an excessive loan." (R. 57.)

George T. Jester, ex-Lieutenant Governor and director, testified:

"I have been in the banking business thirty-one years, am familiar with the National Banking Law prohibiting a loan of more than ten per cent of the surplus, and think there was no violation in loaning $15,000.00 each to Templeton and Fleming without security, but I am unadvised as to whether it would have been illegal for each to sign the other's paper. I think, however, that banks frequently take paper of that kind. It is the custom of banks to allow you to sign as surety for more than ten per cent." (R. 63.)

A. G. Elliott, now vice-president of the City National Bank of Corsicana, former assistant cashier of appeallant, testified:

"I have been in the banking business in various capacities for a period of between thirteen and fourteen years. In my opinion as assistant cashier of the Corsicana National Bank, it was no violation of the Excess Loan Statute to make these loans as they were made, according to my interpretation of the law." * * * "There was no expression from Dr. Johnson at the time this loan was made that indicated that he knew that these loans were excess loans." (R. 101.)

In other words, the active vice-president, the attorney,

the cashier, the assistant cashier and an experienced director, were of the opinion that the loan to the principal, being within the legal amount, the addition of a surety would not make the loan illegal.

They believed that Fleming was entitled to a loan of $15,000.00, and that Templeton was entitled to a loan of $15,000.00; they did not think that, as a matter of further security, the signing of the note of each by the other was prohibited. Were they not right? Is not that view sound? Is not the additional name additional protection? Shall the officer be penalized for an abundance of precaution? Did not the framers of the statute simply intend to limit the amount that a borrower might borrow? Did they ever contemplate limiting the amount for which one man might go another's security?

Answer to Point II.

The transactions of June 10, and December 10, 1907, did not constitute one loan of $30,000.00 to Fleming and Templeton, either jointly or as a firm, and the evidence would not have sustained such finding by the jury.

As suggested by plaintiff en error, the question involved in Point II becomes immaterial if the Court construes Section 5200 as contended for by it. It is likewise true, that if the Court sustains plaintiff in error in the position taken in Point II, the construction of Section 5200 involved in Point I would become immaterial.

(a) The transaction was not one joint loan of $30,000.00, but two separate loans of $15,000.00 each.

By the deposition of defendant in error, taken and introduced in evidence by plaintiff in error, he testified as follows:

"There was no loan made by the Bank to Fleming & Templeton. In June, 1907, D. A. Templeton and Fred Fleming separately did negotiate with the Corsicana National Bank for a loan of $30,000.00 about that date, $15,000.00 each, through two officers of the Bank, directly and indirectly. They were Mr. Elliott, assistant cashier, George E. Jester, cashier, George T. Jester, director, and myself. These negotiations took place in Corsicana. I think there were several negotiations. (R. 24.) It is not a fact that I agreed to lend these two men $30,000.00 of the Bank's money on or about the first of June, 1907. It was not at my suggestion that the amount was divided up into two notes of $15,000.00 each. On the contrary, they tried to borrow the money separately without the other going on the other's security—tried to make a separate and distinct loan without any reference to the other, and each told me what he proposed to do with the money. (R. 25.) Through C. W. Jester, president of the Bank, and under his advice, the two loans of $15,000.00 each, one to Fred Fleming and the other to D. A. Templeton, were renewed for a period of six months from their maturity, about December, 1907." (R. 26.) The defendant in error then details in full his conversation with Mr. Templeton with reference to this loan—the statement by Mr. Templeton that the firm had dissolved, the proposed future plans of each, the taking over by the Bank of Thirty or Forty Thousand Dollars worth of deposits, etc.

He testifies that in the absence of C. W. Jester, president, he conferred with the other officials, all agreeing that it would be a good thing for the Corsicana National Bank if the two loans did not aggregate more than the amount of money to be received from the Fleming and Templeton deposits. He adds: "I notified Mr. Templeton that we would make the loan provided Mr. Fleming would go on his note. He insisted that he was perfectly responsible himself and did not want to ask Mr. Fleming either to endorse or go on his note as security. (R. 32-33.) I conversed with Mr. Fleming in regard to these loans on the same line exactly, only I asked him if he wanted to borrow the money, and he said yes, $15,000.00; I told him that Mr. Templeton wanted the same thing, and he said that Mr. Templeton was perfectly responsible, and would not care to go on his note; wouldn't want to do it, but he finally did it. He left me under the impression that he was not going to do it. (R. 33.) There was no suggestion ever made by them to me that they were making this loan as a firm." (R. 34.)

George E. Jester, cashier, testified:

"My understanding was that there was to be a loan to Fleming and one to Templeton, Fleming going on Templeton's note and Templeton on Fleming's note; I know that from the note and from what Dr. Johnson told me. (R. 53.) "I was cashier of the Bank at that time, and if there had been any idea on my part that these loans were either improper or illegal, or not judicious, I had the right by virtue of my position and interest to say so, and I would have done so. Dr. Johnson told me he had agreed to make

the loans before they had been closed, and it was not too late for me to protest if I had thought there was anything wrong. He further told me that Fleming & Templeton had dissolved and gone out of business in Corsicana, and that he had made a trade with Mr. Fleming and Mr. Templeton by which our Bank was to take over their deposits and make these individual loans of $15,000.00 each. (R. 54.) My father objected to the loan on the ground of the lack of security; I have never heard him object to it on account of its illegality or excess over the National Banking Law allowance. The only objection I ever heard him make was that he thought there ought to be some security." (R. 55.)

Mr. A. G. Elliott, assistant cashier, testified:

"About the latter part of May, or the early part of June, 1907, Mr. Fleming and Mr. Templeton were in Corsicana, and Mr. Templeton was in the Corsicana National Bank discussing the matter of arranging these loans with Dr. Johnson, and Dr. Johnson called me to the front and told me what Mr. Templeton wanted. Dr. Johnson, myself and Mr. Templton were present. Mr. Templeton said that he wanted to borrow $15,000.00; that he and Mr. Fleming had dissolved partnership and that he was going to purchase Mr. Fleming's stock in the Western Bank & Trust Company at Dallas, and that Mr. Fleming was going to retire. Dr. Johnson asked Mr. Templeton what he was worth and Mr. Templeton said he was worth a Hundred Thousand Dollars over and above indebtedness, and he asked him what Mr. Fleming was worth, and he said Mr. Fleming was worth a Half Million. That was shortly before the train left. Mr.

Templeton retired, and Dr. Johnson discussed it further with us. The Doctor said he hated to make such large loans in the absence of Mr. Jester (C. W.), and that he was going to talk it over with George T.—I mean in the absence of C. W. Jester, who was absent at Hot Springs. He said he was going to talk it over with George T. and George E. and sent our negro porter out for Mr. George T. Jester, and later I saw them retire to the back room the same afternoon. * * * Dr. Johnson and Mr. George T. Jester. That was the last of it until I saw Mr. Johnson after the train had left that afternoon. I remarked that Mr. Fleming did not want to sign Mr. Templeton's note. He stated that Mr. Templeton was able to make a good loan without his name, and I asked Dr. Johnson if he was going to accept it that way, and he said 'certainly not.' When Mr. Templeton was in the Bank Dr. Johnson told him that he wanted Mr. Fleming to sign the note with him, and Templeton said he thought he was able to give a good note, but that Mr. Fleming would sign with him he supposed. (R. 98-99.) I carried out the clerical work of making these loans, which was in the line with my regular duties. In pursuance with the loan matters, they sent the notes down from Dallas. When the notes came they each had signed for the other. In sending them exchange for these notes, it was made payable to Fleming and Templeton. I presume that was done at Mr. Templeton's instance. He was in Dallas at that time. My recollection is that **I attended to the work of preparing this exchange. I did that on my own initiative, after my** talk to Templeton. It was not directed to be done by Dr. Johnson, and Dr. Johnson had nothing to

do with it, so far as I know. (R. 100.) The first Bank examiner that visited our bank after these loans were made was J. W. Hertford, as I remember. These loans were discussed and I explained to him as I have previously explained here, that they represented two separate and distinct loans. In one instance Mr. Fleming principal, and Mr. Templeton surety, which statement I made to him in his official capacity and in my official capacity. He said he ought to have something to that effect if the loans were made that way. I wrote Mr. D. A. Templeton, giving him my understanding of the transaction and asked him to write me fully, and Mr. Templeton wrote me that I was correct. I have neither the original nor a copy of the letters between me and Mr. Templeton. I have not access to the Bank correspondence at this time, and have not since this suit was filed. * * * A copy of my letters to Mr. Templeton was kept in the Bank. The original from him to me was kept in the Bank up to the time I left. The correspondence was kept in the Bank in the letter files or attached to copies of the notes. It was in the regular and usual place and not hid away. Mr. Templeton is now deceased; he has been dead about two years, I think." (R. 101.)

(b) These loans were not made to the firm of Fleming & Templeton, the firm having previously dissolved.

Defendant in Error testified:

"A week or so before June 10, 1907, Fleming and Templeton each told me they had dissolved, and they had transferred before that time, I think, all of the deposits of Fleming & Templeton to the Corsicana National Bank. They

had sold their bills receivable, had authorized the Corsicana National Bank to notify customers of their bank, particularly depositors, that they had dissolved and I think it was advertised in a local paper. It was the common opinion that they had dissolved and had left Corsicana; gone out of the building they had occupied. (R. 31.) To the best of my knowledge they had dissolved after they went out of the banking business at Corsicana; each told me that they had dissolved, and outlined their plans of action. Each led me to believe positively that they had done so, and the uses to which they expected to put this money they were borrowing. It was as strong proof as I wanted without seeing the writing of dissolution. (R. 25.) They told me they had dissolved their firm relations absolutely, that they had dissolved so far as business in Corsicana was concerned, absolutely so far as I know. I think yet that they had done so, because each told me of their plans following the dissolution." (R. 41.)

George E. Jester testified:

"I understood, not only from Dr. Johnson, but from other sources as well, that they had dissolved. * * * After the Corsicana National Bank took over the business of Fleming & Templeton, the latter firm went out of business at Corsicana. (R. 54-55.) At the time of the loans in June, 1907, my understanding was that Fleming & Templeton **were closing up all of their branches and that this was probably the last one of them;** that was the general opinion. Contemporaneously with that loan they did close out their business in Corsicana and transacted no further busi-

ness there under the name of Fleming & Templeton." (R. 55.)

George T. Jester testified:

"That for ten or fifteen minutes he and Dr. Johnson discussed the propriety of making the loan prior to the making of the loan." He then adds: "In the conversation above mentioned, I informed Dr. Johnson that Fleming & Templeton were going out of business in Corsicana." (R. 61-62.)

Dr. W. H. Dunn testified:

"I worked for the firm of Fleming & Templeton in Corsicana before it sold out to Corsicana National Bank. (R. 67.) Both the Western Bank & Trust Company and Fleming & Templeton went out of business in Corsicana at the same time in May, 1907. It is my understanding that the co-partnership of Fleming & Templeton was dissolved in Corsicana in May, 1907, and that they held themselves out to the public in Corsicana as being dissolved. The firm of Dunn & Talley wrote letters to the public that they (Fleming & Templeton) had dissolved and gone out of business. (R. 68.) My best recollection is that Mr. Talley got Mr. Nichols or somebody else to take the signs off of the office right away after the dissolution, but I cannot say whether we got them down in May or not. So far as I knew, the dissolution of the partnership applied not only in Corsicana, but everywhere, but I do not know whether they were interested together in their transaction. Both Fleming and Templeton told me in May, 1907, that they had dissolved their business, and I understood they had dissolved every-

where, although they did not say so. There was no limitation that I know of." (R. 69.)

Mr. A. G. Elliott, assistant cashier, testified:

"Fleming & Templeton also published in the papers something about the dissolution. The sum and substance of it was that they had gone out of business in Corsicana and the Corsicana National Bank had taken over their deposits." (R. 103.)

From the foregoing it affirmatively and conclusively appears that both Fleming and Templeton stated they had dissolved; that they held themselves out to the public as dissolved: that letters were sent out to the public that they had dissolved; that they made disposition of their business indicating that they had dissolved; that the signs were taken down from the building indicating that they had dissolved; that all of these steps were taken prior to the making of the said loans in June, 1907.

As opposed to the above testimony that there were two loans of $15,000.00, one to Flemng and the other to Templeton, and not one loan of $30,000.00 to them jointly, or as a partnership, plaintiff in error relies upon loose expressions, in which said transactions are frequently referred to by the witnesses as a loan of $30,000.00. These expressions occurred in connections where it was wholly unnecessary to speak with great accuracy, an where the question of whether or not there was one loan or two was not emphasized in the mind of the speaker. In every case where the witness' attention is especially directed to this question, his positive

and unequivocal testimony is that there were two separate loans of $15,000.00 each. Plaintiff in error has quoted isolated expressions from various witnesses referring to aforesaid transactions as **a loan,** when the witness' testimony, where he was speaking particularly on the subject of whether or not there were two loans or one has testified in unequivocal terms that there were two loans. It has further laid stress upon the letters from the department of the Comptroller of the Currency, and claims that the Comptroller regarded the loans as one loan. These letters will not support this contention, but only the Contention that the Comptroller regarded the loans as excessive. Whether his view was that the two loans in fact constituted one, or that the liability of the surety was a liability included under Section 5200, the record does not disclose. Manfestly the letters of the Comptroller were not intended to do more than identify the transactions to which he referred, and to declare that they were excessive, and in violation of Section 5200. In his letter of June 22 he includes in the list of excessive loans "Fred Fleming, D. A. Templeton, $30,000.00"; and thereafter, in referring to same, says, "the loan to Fred Flemng has become excessive" (R. 107).

Defendant in error attaches no great significance to the looseness and inaccuracy of the writer's expressions. The matter to which he desired to call attention was the particular transaction under consideration, and the fact that he considered it excessive. In the same way, and for the same reasons, the witnesses testified about this transaction.

and when the question under consideration was not whether there was one loan or two, have loosely identified the transaction in the same manner as did the Comptroller.

The fact that in paying out the money covered by these loans after the transaction was made, it was done by draft payable to Fleming and Templeton, is of little, if any, weight. This was done pursuant to directions given by the borrowers after the loans had been made, and apparently as matter of form, and without consultation with or knowledge of defendant; and the fact that the money was so paid out is not evidence that loans were not made as stated by every witness having any knowledge on the subject. The question involved is not what use was made of the money, or how it was paid to the borrower by the Bank, but who was the borrower.

Answer to Point III.

The value of the Corsicana Cotton Mill at the time of its transfer in January, 1910, by the Bank to the Land Loan Company is not a vital issue in this case, for defendant in error contends that his rights could not be affected by this transaction regardless of the question of value of said property.

Defendant in error contends, nevertheless, that said cotton mills property did not exceed in value, $35,000.00, the amount of the note given by the Loan Company to the Bank on said purported purchase.

As to the mill's value, plaintiff in error relies in part upon the fact that the Bank carried an indebtedness for the mill in 1908, at one time of nearly $53,000.00; at another,

for $68,000.00, and at still another for $81,000.00. We submit that the indebtedness of the mill is not a test of the value of the mill's physical properties. But at that time it was a going concern, and in addition to the value of the physical properties had quick assets of the value of $80,000.00 (R. 115). Plaintiff in error relies upon the optimistic statement of defendant in error to the Comptroller in 1908, wherein he thinks that the plant ought to bring not less than Ninety to One Hundred Thousand Dollars. The mill was sold by the Bank to the Loan Company in January, 1910, and was sold by the Loan Company in February or March, 1911. Thompson testified that the mill was deteriorating quite fast (R. 92); that it was a disgrace to the Bank, and had been charged off the books (R. 90); that the mill had lost a Thousand or Two Thousand Dollars a day (R. 92); when standing still it had two or three hired men there (R. 92); it was an eyesore (R. 91); it was the rottenest egg the Bank had (R. 96); the mill had been on the market for at least three years; it had been advertised for sale throughout the State (R. 92); nobody had ever made an offer; different parties had looked at the mill, but nobody would buy; conditions were unfavorable, in part, because of cotton prices (R. 92); the Bank offered the mill at $55,000.00 to Wofford & Lipsitz; they said that was too much (R. 97); Thompson would have been willing to take $25,000.00 for the mill rather than keep it (R. 97). He testified: "It was not worth $10,00.000 to me" (R. 91-95); the mill had been closed down (R. 92). Not one disinterested witness testifies to

the reasonable market value of the mill property at the time and place that the deal took place between Thompson for the Bank and Huggins for the Loan Company. Defendant in error protests when his interests are so vitally at stake, that he shall not be bound by the valuation of Heflin, Huggins, Peters and Thompson. These four are not in position to act disinterestedly. Thompson acts for the Bank in transferring the cotton mill to the Loan Company; Thompson did not know who represented the Loan Company in selling the mill; "just a little job lot of them" (R. 95). Thompson becomes the principal stockholder in the company that bought the mill; Heflin, Vice-President of the Bank, and director of the Loan Company, becomes President of the company that bought the mill; Huggins and Peters were One Dollar shareholders by gift in the Loan Company with one thousand shares, whose assets were a little over a thousand dollars; Thompson and Heflin, on one side, were too much interested; Huggins and Peters, on the other side, were too little interested. If Huggins and Peters had not been mere dummies of Thompson and Heflin, and their demand had been real, they would have insisted upon money, because the Loan Company, if entitled to anything, was entitled to money.

The whole record, as to value of the cotton mill property, distinctly shows that it was of no substantial value. Thompson testified he would have paid $30,000.00 in cash, before he would have had a lawsuit, had he been advised by Mr. Mays or Mr. Prince, his attorneys, that it was a legal claim (R. 97). Mr. Mays had prepared a resolu-

tion which Thompson and Huggins voted for, reciting that it was a legal claim. Thompson further testified: "I was unwilling to take Thirty Thousand Dollars out of the vaults of the Bank and turn it over to the Loan Company for this paper. It was not such a shocking transaction as to make me want to rue back by taking money out of the Bank and turning it over to the Loan Company, although it was unjust and wrong" (R. 96-97). So, in this condition of affairs, as Thompson testified, "we found the Loan Company would have to have something if they gave the Bank this $30,000.00 in notes, and of course, representing the Bank, we gave them the rottenest egg we had, and we gave them the mill (R. 96). We did not think they ought to sit down because they had unloaded it on the Loan Company and let it rot down." Huggins did not even remember what the Loan Company gave them when they traded the Templeton and Fleming notes to the Bank. He believed the Loan Company bought the cotton mill. He did not know how they arrived at the value of $65,000.00 on the mill in the trade with the Bank (R. 71-72).

Analyzed, Thompson was the plenary representative of the Bank to make the deal that was made with the Loan Company; he was President of the Bank and director in the Loan Company, and chief stockholder in the mill company; he was interested in the Bank that put the mill on the Loan Company at $65,000.00; he was interested in the Loan Company and dominated it through his dummy directors when said Loan Company took over the mill property; he was in the same position with reference to

the Loan Company when it disposed of said cotton mill at $50,000.00. He was interested in said purchase of said mill property at $50,000.00, being one of the purchasers. He served too many masters to arrive at a reasonable value for the cotton mill property, and the whole purpose was to legalize a law suit against defendant in error for $30,000.00, of which, if won, he received sixty per cent (R. 85-86). The valuations upon which plaintiff in error relies are but paper transactions, a mere juggling of ownership among three corporate concerns, all dominated by a little coterie seeking to create a cause of action against defendant in error. The testimony bearing upon the value of said property is too lengthy for quotation here, but the Court's attention is particularly called to the record (R. 90-96). This record fairly discloses that it is most questionable whether said cotton mill property was of the value of $35,000.00.

Answers to Points IV and V.

Defendant in error denies that plaintiff in error had the right to restore to the Loan Company the money paid by said company and take the notes in question, and treat the loss thus created, if any, as a loss caused by the making of said loans evidenced by said notes; and defendant in error here denies that such restoration was in fact made.

The Loan Company and the Bank were distinct legal entities; the Loan Company was a State corporation, and the Bank a National corporation. They operated under

separate charters, and were created for different purposes. They exercised different powers and privileges; they were subject to different regulations and limitations.

Back of its charter provisions the declared purpose of the organization of the Loan Company was to transact business and handle paper the Bank could not, and especially to take over the Bank assets which had become doubtful, and which it was not to the interest of the Bank to longer hold.

George E. Jester, Cashier of the Bank, testified that the Loan Company was organized for the purpose of taking over some paper the Bank could not handle, and was also organized and used for the purpose of taking over bad paper and bad loans made by the Bank (R. 52).

Judge C. L. Jester, director and attorney for the Bank, testified: "The Land and Loan Company was organized for doing business which the Bank could not do; undoubtedly in some instances the Bank sold the Loan Company some undesirable paper" (R. 57).

George T. Jester testified: "The purpose of the Loan Company was to handle some paper that would not pass muster at a National Bank; they thought it was for the best interests of the Bank and the stockholders that that Company should be created, and that it was used for the purpose for which it was used."

A. G. Elliott, Assistant Cashier of the Bank, testified: "The purpose of this Loan Company was to take care

of such loans as the Bank could not make, prohibited by the banking laws, and occasionally express loans and undesirable paper of the Bank generally, that we were forced to make disposition of. Therefore, as a matter of purpose, custom and authority, no violation was done to the Loan Company in taking over the Fleming and Templeton notes. The transaction transferring this paper to the Loan Company was upon authority and with a concurrence of the bank's officers."

The transaction transferring this paper to the Loan Company was open, direct and with concurrence of the Bank's officers.

C. W. Jester, President of the Bank, made the transfers of the notes to the Loan Company without recourse (R. 102). C. L. Jester said: "I do not think it could be gainsaid by any member of the board of directors that it was agreeable to all that that transfer should be made" (R. 59). Governor George C. Jester testified: "The transfer of the Fleming and Templeton notes were made with knowledge of all of the board acting together. My brother was president of the Corsicana National Bank at that time, and officially endorsed this paper. I do not think in making the transfer there was anything unjust; we thought we were doing the thing for the best interests of the stockholders of the Bank."

The conclusion is irresistible that the Bank's action was sound in law, morals and good conscience. Down to January 11, 1910, the Bank could not sue Johnson, be-

cause it had suffered no loss if said loans were excessive. The new management of the Bank, after they had purchased their stock in the Bank and the Loan Company, with the understanding and on the basis that nothing could be realized on the loans of Fleming and Templeton, except the value of the security held therefor, determined, for reasons of their own, to prosecute suit against defendant in error; and to this end lawyers were consulted to devise some means of giving the Bank a cause of action which it did not then have against defendant in error.

A mere form of reorganization of the Loan Company is gone through with; five persons are made directors of the Loan Company, with a share of stock each, given them by one of the directors or officers of the Bank desiring to create this cause of action; and these five directors, holding five shares, control the corporate action of the Land Company at the behest of those who had created them and had by gift conferred upon them their only interest in the corporation they represent; and these five shares out of a thousand control the situation and bring about the restoration to the Company of its just and legal rights and compel those who created them and who control 995 shares of the stock of said Company to do it justice. When the Land Company is reorganized, Mays, on the nomination of Heflin, is elected Chairman, and E. N. Johnson, Secretary. When the meeting is organized, Heflin nominates nine directors, including himself, all of whom are unanimously elected; then one Peters, holding one share, offers a resolution, prepared by Mr. Mays, the

Chairman, who was also the Bank's attorney (the Loan Company, it seems, had none) (R. .....) The resolution recites the wrong done the Loan Company by the Bank, and empowers the board of directors just elected, before they had opportunity to accept or decline their new service, to demand restitution from the Bank, which resolution was unanimously carried. No other business except this being before the stockholders' meeting, the same adjourned, and immediately thereafter a meeting of the board of directors of the Company is held. Huggins, holding one share, becomes President; Peters, holding one share, becomes Secretary; Walton, holding one share, becomes Vice-President; Urban, holding one share, becomes Second Vice-President, and Harper seems to have been the only one-share man who escaped official position. Thereupon, Harper offered a resolution, seconded by Vice-President Urban, which followed the terms of the resolution just passed by the stockholders, except that it clothed Huggins, Walton and Urban with plenary powers to make demand upon the Bank for the return of the $30,000.00. Thompson, Heflin and others, who had just voted for the resolution passed by the stockholders, declined to vote; but the resolution was carried by the five one-share men. A few hours later, at a meeting of the stockholders of the Bank, Thompson, Mays and Heflin were elected members of the new board. Shortly thereafter Huggins, President of the Loan Company, and Chairman of the Committee appointed by the aforesaid resolution of its directors, appeared at the Bank meeting and demanded that the Bank return to the

Loan Company the $30,000.00 received for said notes of Fleming and of Templeton. Said resolutions of the stockholders and directors of the Loan Company, copies of which said Huggins brought to the meeting of the stockholders of the Bank, were read to said meeting, and Huggins was thereupon assured that the Bank would give the matter consideration. Thereupon Huggins retired, and after his retirement Heflin offered a resolution conferring on the board of directors just elected power to settle or reject the claim of the Loan Company. By the new board of directors Thompson was elected President, Heflin Vice-President, and Mays Vice-President, of the Bank. This board considered the Loan Company's demand and empowered Thompson, President, to settle the demand in such a way as he might deem to the best interest of the Bank. Thompson, with plenary power from the Bank, and Huggins, with plenary power from the Land Company (Thompson owning 413 shares both in the Loan Company and in the Bank, and Huggins owning one share in the Loan Company—and that by gift, and nothing else), proceeded to a settlement of the controversy between the Land Company and the Bank, and settled it as in this record pointed out. To say that the Land Company in this case made a demand upon the Bank; that the Bank acknowledged the justness of such demand and settled accordingly, and that the Land Company was represented in said demand and settlement by an independent board of directors is a farce too broad to find its way into a court of justice.

Unless the excessive loan results in damage, no action

accrues. The notes in question were transferred to the Loan Company February 12, 1908, which Company then paid to the Bank the full value thereof, and these notes remained the property of the Loan Company until their return to the Bank, January, 1910, in the cotton mill transaction. If the loans were excessive, no injury resulted to the Bank therefrom, and for practically two years, from February, 1908, to January, 1910, the Bank could not have maintained this suit, because not damaged. That the making of the excessive loans was not the cause of the loss, if any, is evidenced by the fact that there was no loss until another and independent cause was introduced to produce a loss, and whether or not there is a loss is not ascertained and measured by the effect of the original transaction, but by that of the cotton mill transaction, the independent and approximate cause of any loss that may exist, and because created by plaintiff in error for the purpose of producing such loss. If plaintiff in error has suffered any damage in this case, the amount of the loans, the excess therein and the amounts collected from Fleming and Templeton on them will not be data from which to ascertain the amounts of such damage. It will be necessary to determine the value of the cotton mill, and if that is found not to exceed $35,000.00, then there has been no loss. If for two years the Bank was whole and uninjured, on what legal theory could it make a trade with the Loan Company, make a loss dependent upon the value of the thing traded to said Company, call the loss caused by the excess in the loans evidenced by the notes

acquired in said trade, and not by the trade, and launch defendant in error into a controversy as to the value of the cotton mill, a question on which probably no two people would agree? The Bank and the Loan Company were distinct and separate legal entities, notwithstanding they had the same officers, same directors and same stockholders, and the stock was held in the same proportion. It may have been that the officers of the Loan Company did not have the right to buy the notes in question from the Bank and give the Bank the Company's money, but it is not shown in this case that they did not. The transaction would certainly have been binding on the Loan Company if authorized by its stockholders, and it does not appear that they did not authorize it, and does affirmatively appear that more than half the stock did expressly authorize it, for the officers making the transaction themselves owned something more than half of the stock of the Company; and it further appears that the Company was in fact brought into existence for the very purpose, among other things, of relieving the Bank from such transactions, and that similar transactions between the Bank and the Company have never been called in question. The record shows that the persons instigating this suit bought more than half of the stock of the Loan Company, including defendant in error's, with full knowledge of the facts of the transactions under consideration, and at a valuation based upon the assumption that the money paid by the Loan Company for the notes in question was properly paid. Money so paid, while technically and legally the

money of the Company, was in reality and in equity, as to something more than half of it, money of the officers carrying through said transaction. Under these conditions, if the Company claimed it had been wronged by the Bank, the Bank had no recourse but to stand suit by the Company, call on the officers guilty of such wrong to defend such suit, and if such defense was unsuccessful, to answer for the damage inflicted on the Bank by their improper conduct. The Bank could not compromise with the Loan Company, suffer a loss by reason of such compromise, and hold its officers in the cause of action they had no part in creating. On the other hand, if the Loan Company had sought redress against its own officers, and not the Bank, because of their improper dealing with its funds, these officers had a right to have it adjudicated by a new legal proceeding, that their conduct was unauthorized and wrongful; that they had thereby damaged the Company, and the amount thereof. In either of such suits the officers would have been entitled to a hearing and the matters hereinbefore suggested would have been issues in the case; and upon the determination of such issues would have rested the result of such case. Plaintiff in error has seen proper not to rely upon the cause, if any, made by defendant in error, but, without his knowledge or participation, to make another and different case, better suited, in plaintiff in error's judgment, to attain the ends it sought.

The facts clearly show it was not the purpose of the Bank to cancel what it now claims to have been an unjust transaction and place the Loan Company in statu quo,

for the evidence shows that the Bank had no intention of making any transaction with the Loan Company, unless it could make one on its own terms. The evidence distinctly shows that the only purpose of those behind this suit was to have the Bank retain the benefits of the transaction made with the Loan Company, and by legal manipulation and legerdemain improve, without possible cost to the Bank the chances of success in this law suit then in contemplation. There was some uncertainty as to the result of the suit, and consequently the Bank, while ostensibly repenting, did not attempt to carry its repentance to such an extent as to put the Loan Company in statu quo by returning its Thirty Thousand Dollars and interest. It was much safer and wiser, from plaintiff in error's standpoint, to appear to do this than to do it in fact.

Answer to Point VI.

If the loans in question violated Section 5200 and were excessive, no liability attached to defendant in error when they were made, and none could attach until the Bank had sustained damage in consequence of such violation.

For a violation of Section 5200, that section provides no penalty. The only penalty for such violation is found in Section 5239, which, so far as pertinent here, provides that the director participating in such violation shall be held liable **for all damages** which the Association **shall have sustained** in consequence of such violation.

The liability is not for the loan, and is not on the

obligation evidencing the loan, but is for the damages which have been sustained in consequence of the violation of the law.

If no damage is ever sustained, no liability ever comes into existence. The liability comes into existence when damage has been sustained, and not before. The damage is a condition precedent to the liability. The Bank had sustained no damage when it transferred said notes to the Loan Company in February, 1908; and prior to that date it could not have sustained this suit against defendant in error. If a cause of action existed against defendant prior to the cotton mill transaction between the Bank and the Loan Company, why was resort had to the questionable farce of reorganizing the Loan Company and selling to it the cotton mill, to put the Bank in position to bring this suit? Defendant in error did not by his pleading take the position suggested by plaintiff under its Point VI. He nowhere in his answer suggested contributory negligence on the part of plaintiff. By the X paragraph of his answer, after setting out the cotton mill transaction, he pleaded that said attempt to create a cause of action against him was fraudulent, void and without legal effect, and did not change his status or relations to said loans and notes, and did not create a liability as against him which did not exist theretofore. That in said transaction said Thompson and his associates acted as the officers and directors of the Bank. That if, in fact, the Bank had suffered loss, such loss was the direct and proximate result of the cotton mill transaction, and was self-inflicted

and was not caused by said loans, whether excessive or not (R. 13). In other words, that any loss the Bank had suffered **was not in consequence** of a violation of Section 5200, but in consequence of the Bank's voluntary cotton mill transaction.

Defendant in error fails to catch the force of the suggestions made in plaintiff's argument under its Point VI. The question is one of cause and effect. If the Bank has suffered loss, what caused such loss? Manifestly, it had suffered no loss prior to the cotton mill transaction, and if that transaction produced no loss, it has never suffered a loss. If the cotton mill property was not worth more than $35,000.00, the Bank has sustained no loss. This much is admitted. If it was worth more, then there has been a loss. Whether or not there has been a loss depends upon whether or not the cotton mill transaction has or has not produced a loss. The loans remain the same, and their effect is not changed by the cotton mill transaction. If that transaction has caused no loss, there is none. If there is a loss, what, then, is its cause?

For Section 5239 see plaintiff in error's brief, pages 5 to 6.

Answer to Point VII.

The court did not err in instructing the jury to find for defendant, and in refusing to instruct them to find for plaintiff, and in a definite sum.

The chief reasons in support of above have already been given.

If plaintiff's Point VI is a correct statement of the law and the liability of defendant attached when the loans were made, then this suit is barred by the statute of limitation of two years.

In this case the cause of action accrued when the liability attached. The liability is for damage which had been sustained, and when the damage had been sustained the cause of action had accrued.

That the two-year statute of limitation applies we do not think is an open question under the decisions of Texas. That defendant dominated the Bank is not supported by the veidence. The loans were made June 10, 1907, and this suit was brought two years, eight months and four days thereafter—on February 14, 1910. During that period defendant was absent from the State ninety-nine days (plaintiff's brief, page 64). This taken from aforesaid period leaves the statute operative for two years and five months, less a few days. If the Court is of the opinion that plaintiff's Point 6 is sound, defendant asks the Court to hold this action barred by limitation.

But defendant does not believe that Point 6 is sound, and does not believe that the cause of action, if any exists, accrued more than two years before the institution of this suit, and consequently does not believe the action is bound, if any in fact exists. The measure of damages in this case, if plaintiff is entitled to recover, is not entirely clear. It is clear, however, that when the damage has been sustained, the amount of such damage must be found as of

that date, and cannot be augmented by more than the legal rate of interest thereafter. The plaintiff is not entitled after the damage has been sustained, to the rate of interest specified in the note, for the defendant is liable for the damage, and not on the note. The latter seems to be the view of plaintiff. Again, Section 5200 says the liabilities to any association, of any person, shall not exceed a given amount. Section 5239 says that in case of the violation of any provision of this title "every director who participated in * * * the same shall be held liable * * * for all damages which the association * * * shall have sustained in consequence of such violation."

The recovery that can be had is for the damages which have been sustained in consequence of the violation of Section 5200. This section is not violated by lending a given amount, and up to that amount there is no violation; but the violation consists in lending a further and additional sum. It is admitted in this case that a loan of $20,000 was lawful; consequently, there was no violation in lending that amount. The violation was in lending the additional $10,000. If this view is correct, then as defendant could only be liable for the damage sustained in consequence of the violation, that damage could not exceed $10,000. Suppose Fleming and Templeton jointly had borrowed from plaintiff $20,000. This would not have been an excessive loan. Suppose the next day they borrowed from it in the same manner $10,000. Their total liabilities to the Bank for money borrowed would have exceeded the limit $10,000, and Section 5200 would have been violated. Sup-

pose, then, Fleming and Templeton failed and paid no part of either obligation—what would be the damage sustained in consequence of this violation? We think $10,000. It is difficult to distinguish on principle between the two cases.

We think the suggestion of plaintiff, on pages 60 and 61 of its brief, as to the application of the proceeds of the collateral, correct.

Another question of some difficulty presents itself in this connection. The controlling consideration inducing the making of these loans was to acquire the banking business of Fleming & Templeton at Corsicana, supposed to be a very valuable acquisition for plaintiff. Through these loans the business was acquired and the expectations as to its value realized. Is the benefit so received to be offset against the loss incurred in arriving at the damage the Bank has suffered? If for making a $10,000 excessive loan a bank should receive from the borrower a benefit of greater pecuniary value than $10,000, and the whole loan thereafter should be lost, it is difficult to see how the bank has sustained loss or damage in consequence of the violation of law involved in the making of such loan.

We respectfully submit that in this case the Bank has suffered no loss. That if said loans are excessive, and it has sustained loss, such loss has not been sustained in consequence of the violation of Section 5200. That said loans are not excessive, and in violation of Section 5200, consequently that the court did not err in instructing a verdict for defendant in error.

SUMMARY.

First. In the conclusion, it is well for the Court to understand that appellee is here with clean hands; that the transaction complained of involves no taint on his good name; that through the loans made there is no suggestion of personal profit or improper motive; that now nearly threescore years of age he stands in the professional and business world without reproach.

Second. His record is not that of a bank wrecker; he served eight years as cashier and active vice-president of the Corsicana National Bank; he had the full confidence and co-operation of his associates; under his administration the bank prospered; it paid annual dividends of ten, fifteen and twenty per cent, and one year not less than sixty per cent; the stock doubled in value, increasing from $125.00 to $250.00 per share.

Third. These loans were made in an open and regular way in due course of business; they were made to two citizens of the highest standing personally and financially; Templeton was reputed to be worth not less than $100,000.00 and Fleming as high as half a million dollars; each of them was regarded in banking circles as entitled to a credit of $15,000.00 without security.

The firm of Fleming & Templeton were retiring from business in Corsicana and as a part consideration for the loan accommodations the bank acquired the deposit of the firm of Fleming & Templeton, which were regarded by all the officials as a valuable acquisition for the bank.

Fourth. These loans were originally made, after discussion, with the full knowledge of the officers then in charge of the Bank affairs, with the affirmative approval of some, and without protest from any. The only question discussed was the natural one of safety. There was no thought or intention on the part of the Appellee, or of his bank associates, to violate or evade the law. They were of the uniform opinion that the loans as made were not excess loans under the law.

Fifth. Of all the officials connected with the loan as originally made, among all the bank officials renewing the loan, the Appellee herein is singled out to be sued. Nor was he seasonably sued by the Bank under the administration of those who knew most about the transactions; nor by the Bank for the benefit of those who had suffered, if anybody suffered, for the appellee's mistake, if he made a mistake. It appears that while the Corsicana National Bank is the nominal plaintiff herein, the moving spirits in this lawsuit are three in number—Thompson, Hefflin and Mays; that they bought a controlling interest in the Bank more than two years after the loans were made, and did not file this suit until more than three years after the loans were made; that when this controlling interest was acquired, the retiring stockholders, Johnson and the Jesters, explained fully the affairs of the Bank, whose condition was so prosperous that the stock was sold for $270.00 and $275.00 per share.

Sixth. This action, taken in the name of the Bank, is not for the good of the Bank; rather would such a suit in-

jure the Bank. It is not taken for the high purpose of protecting depositors; the Bank being solvent and prosperous, depositors are not concerned. It is not taken as a warning to Appellee against further improvident loans; he long since severed his connection with the Bank. It is not taken to punish the Appellee for infractions against the law; that is a function of government, and the government has not exercised such function. It is not taken at the instance of his associates aggrieved at his action; that course never occurred to those who shared with him the responsibility for making the loans. In a word, it is a suit inspired by strangers to the transaction, who long afterward succeeded to the control of the Bank; who had full knowledge of the conditions of the Bank; who were foretold in detail the history of these loans; who knew personally of the bankruptcy of Fleming and Templeton and the hopelessness of realizing more than a bagatele from the Bank's securities; who purchased the Appellee's interest on a "give or take" proposition, then long afterward singled him out of all the former bank officials as a target for personal spleen and as a victim for a speculative lawsuit, solely for the money of which he might be mulcted.

Seventh. However, before the Bank's name could be misused and abused for this purpose, the new management sets about deliberately to create a Bank loss nearly two years after that loss had been made good to the Bank; they procure the election of a dummy Board or Directors for the Loan Company; they confederate to have the Loan Company, through its dummy board, make a demand on the Bank for the return of $30,000.00 to the Loan Company

from the Bank; they prepare and pass high-sounding resolutions for adoption, both by the Loan Company and the Bank; they make a mock showing of surrender by the Bank to the Loan Company's demand; they dump on the Loan Company a cotton mill that the bank had charged off its books by direction of the Bank Examiner; they secure in exchange for this "disgrace" and the "rottenest egg the Bank had," the worthless note of the Loan Company, then without assets, for $35,000.00, and the questionable Fleming and Templeton notes for $30,000.00; then, with this record of corporate jockeying and finacial ledger-demain, professing clean hands and prating superior virtue Plaintiff in Error, is here, seeking redress for Defendant's alleged wrongs long since righted.

If the law requires in this case any other result than that reached in the trial court, and the Circuit Court, it is a reproach to the law, and illustrates that there may be a great gulf between the law and equity and justice.

Respectfully submitted,

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CORSICANA NATIONAL BANK OF CORSICANA *v.* JOHNSON.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 23. Argued January 16, 1919.—Decided December 8, 1919.

A loan made by a national bank to two persons jointly, or in form one half to each but in substance as a single loan, violates the National Bank Act if in excess of the limit set by Rev. Stats., § 5200; and, in a complaint filed by the bank to recover resulting damages from a director under § 5239, a designation of the borrowers as a firm is descriptive merely and not essential. P. 80.

There was substantial evidence in this case from which the jury might find that there was a single, excessive loan to two persons, in making which defendant as a director of the plaintiff bank knowingly participated, rather than two loans, neither of them excessive, made to the borrowers severally. *Id.*

Contingent liabilities incurred by one person avowedly and in fact as surety or as indorser for money borrowed by another are not "liabilities . . . for money borrowed" in the sense of Rev. Stats., § 5200. P. 82. *Cochran* v. *United States*, 157 U. S. 286; Rev. Stats., § 5211, distinguished.

And where the surety signs ostensibly as joint maker, a director who knew and relied upon his suretyship is entitled to prove it when sued under § 5239 for participating in the making of an alleged excessive loan. P. 83.

A director's liability for knowingly participating in the making of a loan in excess of the limit prescribed by Rev. Stats., § 5200, is not affected by the supposed standing of the borrowers, the propriety of his motive, the continued prosperity of the bank, its failure to sue other officers or directors, or to sue him until after a change in the stockholding interest or control, or by the fact that incoming stockholders purchased their shares with knowledge of the loan and of his alleged liability and may profit by a recovery against him. *Id.*

An action in Texas by a national bank against a former director, under Rev. Stats., § 5239, for damages resulting from an excessive loan,

68. Syllabus.

is not barred in two years, but in four. Vernon's Sayles' Civ. Stats., 1914, Arts. 5687, 5690. P. 85.

The liability imposed upon the director under Rev. Stats., § 5239, is direct, not contingent or collateral; the cause of action and the damages are complete when the money is loaned, and, while the damages may be diminished by what the bank collects from the borrowers, it is not obliged to proceed primarily against them. P. 86.

The excessive loan being unlawful *in toto*, the bank's damage in such cases is not measured by the part in excess of what might have been lent lawfully, but by the whole amount plus interest and less salvage. P. 87.

When a director and vice president of a national bank makes an excessive loan, and, afterwards, knowing the borrowers to have become insolvent, joins in causing their paper to be transferred for full consideration but "without recourse" from the bank to a loan corporation, closely affiliated with the bank and having identical officers, directors and shareholders with ratable distribution of shares, the transaction, not having been ratified or acquiesced in by the shareholders, is subject to rescission by the loan company through resolution of a majority in interest at a regular shareholders' meeting, followed by appropriate action of its directors and officers; and an acquiescence in such rescission upon the part of the bank, through its shareholders, directors and officers, is not to be regarded as a voluntary reacceptance of the paper in such a sense that the damages resulting from nonpayment of the loan must be treated, in an action against the director under Rev. Stats., § 5239, as flowing from such voluntary action and not from the unlawful loan itself. P. 88.

In such a case, although the two corporations are distinct in so far that a loss on the paper to the loan company would not be the same in law as a loss to the bank, the shareholders nevertheless have a right to consider the practical effect of the transfer upon their common interest and to be guided by that interest in determining whether and upon what terms to rescind the transfer. P. 89.

Since the transfer would operate only provisionally to satisfy the damages to the bank from the excessive loan, the rescission leaves the director liable for the damages in full; nor is it open to him to object that the rescission was brought about for the purpose of holding him so liable, through changes in the boards of directors involving the introduction of figureheads or "dummies," nor to criticise the terms of the re-transfer agreed to by the two corporations. P. 93.

Reversed.

THE case is stated in the opinion.

Mr. Joseph Manson McCormick, with whom *Mr. Richard Mays* and *Mr. Francis Marion Etheridge* were on the brief, for plaintiff in error.

Mr. Cullen F. Thomas, *Mr. W. J. McKie* and *Mr. Henry C. Coke*, for defendant in error, submitted.

Mr. Justice Pitney delivered the opinion of the court.

This was an action brought under § 5239, Rev. Stats., in the then Circuit now District Court of the United States for the Northern District of Texas by plaintiff in error, a national banking association which we may call for convenience the Bank, against defendant in error, formerly a member of its board of directors and its vice president, to hold him liable personally for damages sustained by the Bank in consequence of his having knowingly violated, as was alleged, the provisions of § 5200, Rev. Stats., as amended June 22, 1906, c. 3516, 34 Stat. 451, by participating as such director and vice president in a loan of the Bank's funds to an amount exceeding one-tenth of its paid-in capital and surplus.

The action appears to have been commenced in February, 1910, and, after delays not necessary to be recounted, was tried before the District Court with a jury. A verdict was directed in favor of defendant, and the judgment thereon was affirmed by the Circuit Court of Appeals, no opinion being delivered in either court. The judgment of affirmance is now under review.

The amended § 5200, Rev. Stats., as it stood at the time the alleged cause of action arose, reads as follows, the matter inserted by the amendment being indicated by brackets:

"Sec. 5200. The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company

or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such associations, actually paid in [and unimpaired and one-tenth part of its unimpaired surplus fund: *Provided, however,* That the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the association]. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed."

The pertinent portion of the other section reads as follows:

"Sec. 5239. If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. . . . And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

Under the rule settled by familiar decisions of this court, in order for the Bank to prevail in this action it must appear not only that the liabilities of a person, company, firm, etc., to the Bank for money borrowed were permitted to exceed the prescribed limit, but that defendant, while a director, participated in or assented to the excessive loan or loans not through mere negligence but knowingly and in effect intentionally, *Yates* v. *Jones National Bank*, 206 U. S. 158, 180; with this qualification, that if he deliberately refrained from investigating that which it was his duty to investigate, any resulting violation of the statute must be regarded as "in effect inten-

tional," *Thomas* v. *Taylor*, 224 U. S. 73, 82; *Jones National Bank* v. *Yates*, 240 U. S. 541, 555.

The facts are involved, and need to be fully stated. And necessarily, in order to test the propriety of the peremptory instruction given by the trial judge, we must bring into view the facts and the reasonable inferences which tended to a different conclusion, and where the evidence was in substantial dispute must adopt a view of it favorable to plaintiff; but of course we do this without intending to intimate what view the jury ought to have taken, had the case been submitted to it.

On June 10, 1907, plaintiff, whose banking house was at Corsicana, Texas, had $100,000 capital and $100,000 surplus, aggregating $200,000, and making $20,000 the applicable limit under § 5200. Defendant was a director and vice president of the Bank, active—perhaps dominant—in the conduct of its banking business, and familiar with the state of its finances.

The averment of a breach of duty relates to an alleged excessive loan or loans made on or about the date last mentioned to Fred Fleming and D. A. Templeton, who for a considerable time had been engaged in business as private bankers in Corsicana and in several other towns in Texas under the firm name of Fleming & Templeton, and also had conducted at Corsicana a branch bank for the Western Bank & Trust Company, a state institution of which Fleming was president and Templeton vice president and whose main banking house appears to have been at Dallas, about 50 miles from Corsicana. There was evidence that early in June, 1907, Fleming & Templeton terminated their private banking business at Corsicana and turned over their deposit accounts—between $30,000 and $40,000—to the Corsicana National Bank, plaintiff herein, together with money or exchange on the Western Bank & Trust Company sufficient to meet them. Whether the firm was in fact dissolved at that time or later, and

whether the dissolution applied to their other branches, or to the Corsicana business only, were points concerning which under the evidence there was some doubt.

On or about June 10th, while the president of the Bank was absent on vacation, defendant loaned for the Bank to Fleming and Templeton $30,000 (less discount) upon two promissory notes for $15,000 each, maturing in six months. Defendant testified that both Fleming and Templeton negotiated with him, asking for two separate loans of $15,000 each, telling him that they had dissolved partnership and were winding up and closing out at Corsicana, and would turn over between $30,000 and $40,000 of deposits to the Corsicana National Bank. He further testified: "One of the considerations of this loan was the transfer of the deposits and with it the accounts of Fleming & Templeton." He insisted that two separate loans were made, of $15,000 each, one to Fleming for which Templeton was surety, the other to Templeton for which Fleming was surety. But defendant's own account of the circumstances under which and the special inducement upon which the loan was made, with other evidence to be recited below, left room for a reasonable inference that there was in fact but a single loan, and that separate notes were taken in order to avoid the appearance of a loan in excess of the limit. They were in the usual form of joint and several notes, payable to plaintiff's order. One was signed "Fred Fleming, D. A. Templeton," the other "D. A. Templeton, Fred Fleming," without naming either maker as surety. Discount to the amount of $900 was deducted, and the net proceeds, $29,100, were paid by a draft drawn by the Bank on the Western Bank & Trust Company to the order of "Fleming & Templeton," which was sent by mail inclosed in a letter written upon the Bank's letter-head, dated June 10, 1907, and addressed to Templeton at Dallas, in which letter, after acknowledging receipt of the two notes for $15,000 each, "signed by

yourself and Fred Fleming," it was stated: "We have deducted the discount, $900.00, and hand you herewith our draft #A, 7830, on Western Bank & Trust Co., order Fleming & Templeton, for $29,100.00." The retained copy of this letter appears to have been introduced in evidence; at the foot, opposite the place of signature, are the initials "V. P." With regard to this, as also to certain other "V. P." letters dated in the following December and relating to renewal of the notes, defendant testified: "I think I signed the letters which are offered in evidence as Exhibits H," etc.

There was evidence that the draft for $29,100 was indorsed in the firm name by Templeton and deposited in the Western Bank & Trust Company at Dallas to the credit of the joint account of Fleming & Templeton, to make up in part an overdraft amounting to more than $125,000; this account having been overdrawn constantly, and in large but varying amounts, since the preceding April.

As a result of an examination of the Bank made a few days later, the Comptroller of the Currency wrote to its president under date June 22, severely criticising the Fleming-Templeton loan, among others, as excessive under § 5200, Rev. Stats., and saying: "Immediate arrangements must be made to reduce these loans to the legal limit." It was a fair inference that defendant knew of this letter, or in the proper performance of his duties would have known of it. Whether any reply was made to it did not appear.

Notwithstanding the warning thus given, when the notes matured in December they were renewed with defendant's assent for a further period of six months, joint notes being given to the Bank as before, and the further sum of $900 being paid by Fleming & Templeton to the Bank for interest in this way: plaintiff, under defendant's direction, charged the amount in a single

item to the Western Bank & Trust Co., for account of the borrowers, and the latter institution acknowledged the charge, gave credit to plaintiff for the amount, and charged it against the joint account of Fleming & Templeton. During December some correspondence passed between defendant at Corsicana, he writing as vice president of the Bank, and Templeton at Dallas, relating to the renewal of the notes, tending to show that they were regarded by both writers as representing a single obligation of "Fleming & Templeton." Thus, Templeton on December 3d wrote to defendant: "Referring to the notes of Fleming & Templeton," etc.; and defendant wrote to him on the following day mentioning "renewal notes of loan to you and Mr. Fleming."

The evidence tended to show that up to the time of the renewal the borrowers were apparently solvent, but that about January 15, 1908, they became manifestly and notoriously insolvent. The Western Bank & Trust Company closed its doors on that date and went into liquidation, with Fleming and Templeton owing it several hundred thousand dollars. About the same time Fleming and perhaps Templeton went into bankruptcy, and Templeton afterwards died, and their respective estates paid small dividends upon their obligations. The jury would have been warranted in finding that it was evident to defendant, as a banker, on and after the 15th of January, that there would be a substantial loss upon the Fleming and Templeton notes.

On February 6, 1908, an official bank examiner visited the Bank, with the result that on the 26th the Deputy Comptroller wrote calling the attention of its officers to alleged repeated violations of the national banking law in the conduct of its affairs, specifying certain loans in excess of the limit prescribed by § 5200, among them "Fleming & Templeton, $30,000," and stating that "the directors who are responsible for the loans or permitted

them to be made should assume liability for any loss that may be sustained thereon and not throw the burden of such loss on innocent stockholders." On March 11 the directors, including defendant, united in signing a letter to the Comptroller in reply to his criticisms, among other things saying: "Reference to the Fleming & Templeton item of $30,000 we beg to say that this item has been disposed of by the Bank and they now owe us nothing." It was a reasonable inference that defendant intended to admit that it was a single loan and in excess of the limit.

In explanation of the statement that it had been "disposed of by the Bank," the evidence tended to show that on February 12, 1908, nearly a month after the insolvency of Fleming and Templeton had become notorious and a few days after the bank examiner's visit, defendant and the president of the Bank caused the two notes of December 10 to be transferred "without recourse" to an affiliated corporation known as the Corsicana National Land & Loan Company (they being directors and officers of this corporation also), upon payment of $29,400, the full face value less discount, as consideration; the payment being made by a transfer of credit upon the books of the Bank. Defendant relies upon this as wholly relieving the Bank from loss by reason of the loan, and consequently as releasing him from responsibility to the Bank. But the evidence tended to show further that the loan company in January, 1910, shortly before this suit was brought, rescinded the transaction upon the ground of fraud, and that there was a settlement as between the loan company and the Bank based upon an acknowledgment by the latter of the former's right to rescind.

A brief account of the relations between these two corporations, and of their dealings respecting the notes in question, becomes material. The loan company was organized in the month of May, 1907, under the laws of the State of Texas, with $50,000 capital stock and with

stockholders and directors identical with those of the Bank. The capital of the company was subscribed for and paid out of a special dividend declared by the directors of the Bank for the purpose, and each stockholder had the same proportion of stock in the company as in the Bank. The purpose of the new corporation, as declared in its charter, was the "accumulation and loan of money." Defendant testified: "The purpose of the loan company, a state corporation, was to take such paper as the bank could not handle. It was organized by the stockholders of the bank and paid for out of the earnings of our bank. . . . The loans of the loan company were largely real estate loans. It was to help out the bank in every possible [way]." From the organization of the company in the spring of 1907 until the spring of 1909, defendant was a director and active in the management of the company as well as of the Bank. He testified that the stockholders of the two corporations were identical, and continued to be so during the entire period just mentioned; that "whenever there was a sale of bank stock, it carried with it that particular shareholder's stock in the loan company." During the same period the two corporations had the same president, vice president, and directors, while the assistant cashier of the Bank was secretary of the loan company.

So far as appeared, the transfer of the Fleming and Templeton notes to the loan company, and the payment made by the company to the Bank, were never expressly authorized or ratified by the stockholders of either corporation; nor did it appear that the stockholders of the loan company ever authorized its directors to employ its funds in taking bad or doubtful paper off the hands of the Bank at a loss; much less, to relieve the directors of the Bank from responsibility for its losses.

In April or May, 1909, there was a change in the control of the Bank due to sales of a majority of the stock followed

by a change of officers, defendant retiring as both stockholder and director. The corresponding shares of the stock of the loan company were transferred at the same time, and the new management officered the company as well as the Bank. So far as appeared from the evidence, the transfer of defendant's stock carried with it no agreement that he should not be held responsible to the Bank because of the Fleming and Templeton loan, nor any approval of the transfer of the loan to the loan company.

The Bank and the loan company held annual meetings of stockholders on January 11, 1910, at which, for the first time so far as appears, the boards of directors were so selected that a majority of one board no longer were directors of the other corporation. This was done by electing, as five out of nine directors of the loan company, individuals holding one share of stock each, recently placed in their names for the purpose of qualifying them. They were not stockholders of the Bank; but, except for them, the stockholders of the two corporations still were the same, and it was a reasonable inference that the two meetings were attended by the same individuals. Minutes of these stockholders' meetings, and of certain meetings of the respective boards of directors, were introduced in evidence and supplemented by other testimony, from all of which the following additional corporate proceedings appeared. The stockholders of the loan company, more than a majority in interest being present, unanimously adopted a resolution reciting the taking of the notes of December 10, 1907, by the Bank from Fleming and Templeton, and that on or about January 15, 1908, the makers became insolvent and the notes worthless and uncollectible; and setting forth that, with knowledge of this fact, certain of the directors and officers of the Bank illegally and wrongfully transferred the notes to the loan company, for which the same officers and directors,

being likewise officers and directors of the loan company, illegally and wrongfully transferred to the Bank out of the funds of the loan company the face value of the notes, whereby the Bank had committed a wrong upon the loan company and was liable to it therefor; and by this resolution the directors of the company were authorized to adjust and settle this demand against the Bank and to tender and return to the Bank the Fleming and Templeton notes and indebtedness with any collateral security held for them. The directors of the loan company thereafter and on the same day passed a resolution to the like effect, and appointed a committee to make demand upon the Bank for return of the money wrongfully transferred to the Bank for the notes and to adjust and settle this demand; the notes and indebtedness of Fleming and Templeton and any collateral security held therefor being at the same time tendered and ordered to be returned to the Bank. This committee appeared before the stockholders' meeting of the Bank and formally presented the demand, whereupon these stockholders authorized their board of directors to act upon the claim made on the Bank by the loan company and to adjust and settle it if they should conclude that the Bank was liable to the loan company, otherwise to reject it. A few days later a meeting of the new board of directors of the Bank was held, at which a communication from the loan company committee was presented, in substance the same as that previously presented to the Bank stockholders, and the resolution of the Bank stockholders thereon was read; and thereupon the directors authorized the president of the Bank, if he believed the claim of the loan company to be just, to proceed to settle it in such a way as he might deem to be to the best interest of the Bank. Under this authority, the president of the Bank communicated to the loan company committee in substance that the Bank recognized the legality and justness of the claim of the loan company and

would pay it provided the company would purchase from the Bank a certain cotton mill property for the sum of $65,000, accept $30,000 of this in payment of its demand against the Bank, transfer to the Bank the Fleming and Templeton notes and indebtedness, with all collateral securing the same, and execute to the Bank its own promissory note for the remaining $35,000, with the cotton mill property as security. This was agreed to by the directors of the loan company, and the settlement was carried out accordingly. Shortly after this, the present action was brought.

The "collateral security" above referred to appears to have consisted of certain shares of stock in a corporation known as the Fleming Ranch & Cattle Company, acquired in the winding-up of the bankrupt estate of Fleming. These shares, so far as the evidence showed, were the only thing of value recovered either by the loan company or by the Bank from the estates of the borrowers. After the present suit was commenced, the Fleming Ranch & Cattle Company was liquidated, and in the distribution of its assets the Bank received sums aggregating $9,149.34, which are credited as payments on account of its claim against defendant.

So far as the above-recited facts were in dispute, there was substantial evidence tending to support a view of them favorable to plaintiff's contentions. What weight should be given to it was for the jury, not the court, to determine. *Hepburn* v. *Dubois*, 12 Pet. 345, 376; *Lancaster* v. *Collins*, 115 U. S. 222, 225; *Chicago & Northwestern Ry. Co.* v. *Ohle*, 117 U. S. 123, 129; *Ætna Life Ins. Co.* v. *Ward*, 140 U. S. 76, 91; *Troxell* v. *Delaware, Lackawanna & Western R. R. Co.*, 227 U. S. 434, 444.

We proceed to consider, in the order of convenience, the questions raised upon the record.

(1) And first, as to the direction of a verdict in favor of defendant. Plaintiff, in the amended petition upon which

the case went to trial, after a circumstantial statement respecting the transaction of June 10, 1907, alleged that the discount of the notes "was an excessive loan, whether regarded as one loan to the firm of Fleming & Templeton, as plaintiff alleges the fact to be, or regarded as two loans, as contended for by the defendant in his pleadings heretofore filed herein." The designation of Fleming & Templeton as a "firm" is but descriptive and not essential, and the pleading is sufficient if the proof tended to show a single and excessive loan made to them jointly in any capacity, or made in form one-half to each but in substance as a single loan.

In our opinion, the trial judge clearly erred in holding, as in effect he must have held, that there was no substantial evidence from which the jury might find that there was an excessive loan in the making of which defendant, as a director of the Bank, knowingly participated. That he acted for the Bank in the matter, and that he knew that any loan in excess of $20,000 was prohibited, he admitted. His denial that it was a single loan, or that he knew it to be such, is not conclusive; there being substantial evidence inconsistent with it, tending to show facts and circumstances attendant upon the transaction, of which he had knowledge, and also subsequent conduct in the nature of admissions by him, inconsistent with his testimony upon this point. The account of the negotiations, as given in defendant's own testimony; the fact that he knew that the firm of Fleming & Templeton, even if dissolved, was still in liquidation; that one of the inducements for the loan (or "loans") was the transfer of deposit accounts of equal or greater amount from the firm to the Bank; that Templeton alone (as shown by the exhibits) appears to have corresponded with defendant concerning the notes; that defendant himself, as vice president of the Bank, wrote to Templeton acknowledging receipt of the two notes for $15,000 each, "signed

by yourself and Fred Fleming," and having "deducted the discount, $900," inclosed the Bank's draft "order Fleming & Templeton for $29,100"; that when the notes fell due in December the correspondence concerning their renewal was conducted by defendant with Templeton alone, and they were treated as representing a single loan and the discount was charged by defendant or under his direction in a single item; that after the borrowers had become notoriously insolvent, in February, 1908, defendant took part in transferring the notes "without recourse" to the affiliated loan company in the manner and under the circumstances above stated; that the transfer was effected a few days after the visit of the bank examiner; that when the Deputy Comptroller wrote to the Bank, classifying "Fleming & Templeton $30,000" as an excessive loan and demanding that the directors responsible for making it should assume the loss, defendant joined in signing the reply that has been quoted;—all this, to say nothing of other circumstances that might be mentioned, would have warranted the jury in finding, notwithstanding defendant's denial, that in fact the disputed transaction was a single loan of $30,000 less discount, or, to be precise, $29,100, made to Fleming and Templeton jointly; that defendant knew and assented to this at the time; and that the taking of two notes was but a device to conceal the true nature of the transaction.

(2) Irrespective of whether there was but a single loan or were two separate loans, plaintiff in error contends that the liability of a surety must be added to his direct and primary liability in determining his total liabilities for money borrowed within the meaning of § 5200, and that in the present case, although the notes should be found to have represented two entirely separate loans, each within the limit, they must be added together in order to determine whether the limit was exceeded. *Cochran* v. *United States*, 157 U. S. 286, 295, 296, is cited, where it was held

that the word "liabilities," as employed in § 5211, Rev. Stats., included contingent liabilities. We do not regard the case as controlling, because the purpose of that section, and the language employed, differ materially from the purpose and the language of the provision we are dealing with. As to whether in § 5200 the words "the total liabilities . . . of any person . . . for money borrowed," etc., require the liability of a surety or of an indorser for money borrowed by another to be added to his direct liability for money borrowed by himself in ascertaining whether the limit is exceeded—whatever view we might entertain were the matter *res nova*—we are advised that by the practice and administrative rulings of the Comptroller of the Currency during a long period, if not from the beginning of national banking, liabilities which are incurred by one person avowedly and in fact as surety or as indorser for money borrowed by another are not included in the computation. We feel constrained to accept this as a practical construction of the section. And we are not prepared to say that in an action against a director who knows and relies upon the fact that a particular obligation is signed by one merely as surety, although not so described, the defendant may not be permitted to show the truth.

(3) In view of certain contentions urged here in behalf of defendant, and perhaps acceded to by the courts below, it should be said that the question whether defendant knowingly participated in or assented to the making of a loan in excess of the limit prescribed by § 5200 is not to be confused by any consideration of the supposed standing of the borrowers, personal or financial. The statutory limit is a special safeguard prescribed by Congress for the very purpose (among others) of preventing undue reliance upon the financial standing of borrowers. Nor would the absence of any improper motive or a desire for personal profit on defendant's part be a defense; nor the fact that

in spite of a loss upon this transaction the Bank remained solvent or even prosperous. Neither is the question of defendant's liability, or the extent of it, to be affected by the fact, if it be a fact, that other officers or directors of the Bank were in part responsible, yet defendant alone was sued; nor that the Bank refrained from suing him until after a change in the stockholding interest or control. Again, in the absence of some special agreement—and none such appears—it is immaterial whether the new stockholders were aware of the excessive loan, or of defendant's alleged liability in the premises, at the time they acquired their stock; or whether they possibly may now profit by an increase in the value of the shares in the event of a recovery against him.

It is clear from the language of § 5239, Rev. Stats., that *every* director knowingly participating in or assenting to a violation of any of the provisions of the act is "liable in his *personal* and *individual* capacity," without regard to the question whether other directors likewise are liable. The violation is in the nature of a tort, and the party injured may sue one or several of the joint participants. *Bigelow* v. *Old Dominion Copper Co.*, 225 U. S. 111, 132. And the liability extends to "all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation." In the present action the Bank represents the interest of its shareholders, as well as of its creditors; and if there was a violation of the act by defendant, with resulting diminution of its assets, the Bank is entitled to recover the damages thus sustained, notwithstanding it remained solvent, and irrespective of any changes in its stockholding interest or control occurring between the time the cause of action arose and the time of the commencement of the suit or of the trial. Even if it appeared that new stockholders acquired their interests with knowledge of the fact that such a loss had been sustained and that defendant was responsible for it,

neither they nor the Bank would be thereby estopped from having full recovery from defendant. There is no reason in the law to disentitle a purchaser of shares from even relying upon the responsibility of directors to make good previous losses as an element adding intrinsic value to the shares. Compare *Bigelow* v. *Old Dominion Copper Co.*, 74 N. J. Eq. 457, 500.

(4) Defendant, among other defenses, pleaded the two-year statute of limitations of the State of Texas. Plaintiff demurred on the ground that this limitation was not a bar; and also replied setting up certain facts that need not now be recited. The demurrer was overruled.

The provisions of the Texas statutes upon the subject are Vernon's Sayles' Tex. Civ. Stats., 1914, Arts. 5687, 5688, and 5690, set forth in the margin.[1]

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[1] Article 5687.—There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such personal property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged shall be particularly specified, and limitations shall run against each item from the date of such delivery, unless otherwise specially contracted.

6. Action for injury done to the person of another.

7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured.

Article 5688.—There shall be commenced and prosecuted within

In our opinion, the action is not one of the kinds specified in Art. 5687, to which the two-year limitation applies, but is within the general description of Art. 5690 and subject only to the limitation of four years. Hence the limitation pleaded was no defense; and it is not contended that there was any basis in fact for pleading the four-year limitation.

(5) Assuming the Fleming and Templeton notes were found to represent an excessive loan, knowingly participated in or assented to by defendant as a director of the Bank, in our opinion the cause of action against him accrued on or about June 10, 1907, when the Bank through his act parted with the money loaned, receiving in return only negotiable paper that it could not lawfully accept because the transaction was prohibited by § 5200, Rev. Stats. The damage as well as the injury was complete at that time, and the Bank was not obliged to await the maturity of the notes, because immediately it became the duty of the officers or directors who knowingly participated in making the excessive loan to undo the wrong done by taking the notes off the hands of the Bank and restoring to it the money that had been loaned. Of

four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together.

Article 5690.—Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued, and not afterward.

course, whatever of value the Bank recovered from the borrowers on account of the loan would go in diminution of the damages; but the responsible officials would have no right to require the Bank to pursue its remedies against the borrowers or await the liquidation of their estates. The liability imposed by the statute upon the director is a direct liability, not contingent or collateral.

(6) The question is raised whether the entire sum loaned, plus interest and less salvage, should be treated as damages sustained by the Bank through the violation of the provisions of § 5200, Rev. Stats.—assuming it be found that defendant did knowingly violate them—or whether only the excess above what lawfully might have been loaned (presumably $20,000) should be so regarded. We assume that if, in good faith and in the ordinary course of business, defendant had made a loan of $20,000 to Fleming and Templeton, and if while this loan remained unpaid he had afterwards and as a separate transaction unlawfully loaned them an additional $10,000, in excess of the limit, the damage legally attributable to his violation of the limiting provision would have been but $10,000. But that is not this case. According to the evidence, the $30,000 less discount was paid out by the Bank as a single payment; and if the jury found it to have been loaned in excess of the statutory limit (whether in form one loan or two) it must be upon the ground that it was a single transaction. That being so, it would follow that the entire amount disbursed by the Bank was disbursed in violation of the law. The cause of action against a director knowingly participating in or assenting to such excessive loan would be complete at that moment, and entire; there would be no legal presumption that the borrowers would have accepted a loan within the limit, if their application for the excessive loan had been refused; nor that a director who in fact violated his duty as defined by law would, if mindful of it, have loaned them even $20,000. To mitigate in his favor

the damages resulting from a breach of his statutory duty by resorting to the hypothesis that if he had not disregarded the law in this respect he would have pursued a different course of action within the law, would be an unwarranted resort to fiction in aid of a wrongdoer, and at the expense of the party injured. Hence, the entire excessive loan would have to be regarded as the basis for computing the damages of the Bank.

(7) In behalf of defendant it is insisted that, assuming the loan was excessive, no loss accrued to the Bank by reason of it, because the Fleming and Templeton notes and indebtedness were transferred to the loan company February 12, 1908, for a cash consideration equivalent to their face value less interest to maturity.

Plaintiff in error contends that the Bank and the loan company were so identical in ownership and united in management that the latter was but the *alter ego* of the former, and a loss to the loan company on the notes was the same as a loss to the Bank, not only practically but in contemplation of law. On the other hand, the argument of defendant in error regards the two corporations as if they were wholly independent; treats the transfer of the notes from the Bank to the loan company, in February, 1908, as valid and the money or credit contemporaneously transferred to the Bank like money coming from an outside party; and looks upon the retransfer in January, 1910, as voluntary on the part of the Bank and an unnecessary assumption of a loss that otherwise it had escaped.

We cannot accede to either contention in the extreme. Because the Bank and the loan company were distinct legal organizations, operating under separate charters derived from different sources, and possessing independent powers and privileges, we are constrained to hold that, notwithstanding the identity of stock ownership and their close affiliation in management, for some purposes they must be regarded as separate corporations, for

instance, as being capable in law of contracting with each other. See *Nashua Railroad* v. *Lowell Railroad*, 136 U. S. 356, 372, 373, 375, *et seq.* But in considering the practical effect of such inter-corporate dealings, especially as bearing upon the duties of the common directors and the authority of the stockholders to control them, we need not and ought not to overlook the identity of stock ownership. Thus, the transfer of the notes in February, 1908, from the Bank to the loan company, in consideration of their full face value ostensibly or actually paid by the company to the Bank, evidently could have no effect in relieving the stockholding interest from loss, since each stockholder of one corporation had a corresponding interest in the stock of the other, and any theoretical saving that accrued to him as a stockholder of the Bank was balanced by a corresponding loss sustained in his capacity as a stockholder of the company. At the same time the stockholders in reviewing that transaction might lawfully and properly base their action upon all the facts of the situation; recognizing the legal separateness of the corporations as existing in order to test the validity of the transfer and the feasibility of setting it aside without litigation, while giving effect to their community of interest in deciding whether this should be done, and, if so, then in what manner and upon what terms.

(8) Regarding the two corporations as legally separate, and ignoring for the moment the community of stockholding interest, it is plain that the transaction of February 12, 1908, in which the Bank sold the Fleming and Templeton notes and indebtedness to the loan company for their full face value, was *prima facie* tantamount to a satisfaction of the damages that the Bank had sustained by reason of the excessive loan; but that it had this effect only provided the transaction was good and valid as against the loan company and its stockholders, or was duly ratified by them. For if it was invalid, or was made

under circumstances rendering it voidable by the loan company, or the stockholders, neither the Bank nor defendant was entitled to have the transaction stand for their benefit; and if in fact it was avoided for good cause, the Bank would be entitled to its action against defendant the same as if the annulled transaction never had occurred.

Was there good cause for the rescission? The fact that the same persons were directors and managers of both corporations subjects their dealings *inter sese* to close scrutiny. That two corporations have a majority or even the whole membership of their boards of directors in common does not necessarily render transactions between them void; but transactions resulting from the agency of officers or directors acting at the same time for both must be deemed presumptively fraudulent unless expressly authorized or ratified by the stockholders; and certainly where the circumstances show, as by the undisputed evidence they tended to show in this case, that the transaction would be of great advantage to one corporation at the expense of the other, especially where in addition to this the personal interests of the directors or any of them would be enhanced at the expense of the stockholders, the transaction is voidable by the stockholders within a reasonable time after discovery of the fraud. *Twin-Lick Oil Co.* v. *Marbury*, 91 U. S. 587, 589; *Wardell* v. *Railroad Company*, 103 U. S. 651, 657, *et seq.*; *Thomas* v. *Brownville, &c. R. R. Co.*, 109 U. S. 522, 524; *Richardson* v. *Green*, 133 U. S. 30, 43; *McGourkey* v. *Toledo & Ohio Ry. Co.*, 146 U. S. 536, 552, 565.

The evidence having tended to show a transfer of the notes in question from the Bank to the loan company "without recourse," for a consideration equivalent to their full face value, after the insolvency of the makers had been brought to light, with resulting discredit of the notes as marketable paper and probable inability of the makers to pay them; a transaction carried out by directors and

officers who acted as agents or trustees for both corporations, and one at least of whom, as the jury might find, was subject to criticism from the Comptroller of the Currency, and to an action at the suit of the Bank, for making an excessive loan; it clearly was open to the jury to find that the transfer was fraudulent as against the loan company, and as against the stockholders of both companies. The jury should have been instructed to this effect; and further, that if they found the transfer to have been fraudulent, the stockholders had the right to rescind it within a reasonable time after discovery of the fraud; and that if, having such right, the stockholders of the loan company asserted it and gave notice of its claim to the Bank in the manner shown by the minutes, and the Bank recognizing and acknowledging the justness of the claim restored to the loan company what was accepted as the equivalent in value of that which the Bank had received in the transaction of February, 1908, this was not to be regarded as a voluntary or unnecessary assumption of loss by the Bank, but on the contrary the result, so far as defendant was concerned, was the same as if by court decree, in a suit brought by the loan company, or by the stockholders, the Bank had been compelled to make such restitution; and that thereafter the rescinded transaction could not be regarded as amounting, even in form of law, to a satisfaction of the damages sustained by the Bank as a result of the Fleming and Templeton loan.

So far as the evidence showed, neither the stockholders of the loan company, nor indeed its board of directors, ever expressly ratified or affirmed the transfer. Nor does it appear that there was any unreasonable delay on the part of the stockholders in taking action to set it aside after they had become aware of the circumstances; such delay as there was the Bank waived, as it had a right to do; and defendant does not appear to have changed his position or to have been prejudiced by reason of it.

Assuming, in defendant's favor, that because the corporations were legally separate they could not undo the transaction of February, 1908, without formal corporate action, the procedure adopted was sufficient for the purpose. It is objected that the personnel of the boards was changed for the very purpose of accomplishing the rescission, and that the new members were mere figureheads or dummies for the controlling stockholders and had no *bona fide* stock of their own. But if the transaction of 1908 was a fraud as against the loan company, and done without authority of the stockholders, they were quite within their rights in acting through dummies if necessary in order to set it aside. We do not think it was necessary to change the membership of the boards; similar action by boards having identical membership would have had the same effect, if done by the express authority of the stockholders in order to undo an improper and unlawful act of former directors injurious to their interests.

It is said that the rescission was put through in order to enable the Bank to bring the present action against defendant. But it was not done to build up a ground of action against him, for this arose if at all prior to February 12, 1908, the damage to the Bank being sustained when with his participation and assent its money was paid to Fleming and Templeton in June, 1907, for promissory notes that the Bank could not lawfully take. Defendant's liability to the Bank, if he was liable, was direct and primary, and to it the notes occupied the status of collateral security. Had the disposition made of them in February, 1908, been valid and unassailable, it would have borne the appearance of a satisfaction of the damages only because the two corporations were legally separate; but in substance, so far as the stockholders were concerned, it would have satisfied nothing because it merely transferred money to them in one capacity by taking it from them in another. Defendant had no right to have the transaction remain

in effect as a screen to protect him from suit by the Bank under § 5239, Rev. Stats. So far as it may be supposed to have protected him while it remained unrescinded, the result was entirely gratuitous, no consideration having proceeded from him in the matter. Indeed, if his act in shifting the discredited loan was done in part to give him immunity from such an action as the present, this would furnish an additional ground entitling the stockholders to set the transfer aside. And if, either on this ground, or on the ground that the transfer was put through for the advantage of one corporation at the expense of the other by officers or directors acting at the same time for both and without the authority of the stockholders, the transaction was voidable by the stockholders and they resolved to avoid it, it would savor of absurdity to sustain defendant's contention that this was done in order to enable the Bank to sue him; for of course they would have the right to do it for that very purpose.

(9) In defendant's behalf it is insisted that at the time of the proceedings of January, 1910, the value of the cotton mill property was much less than $65,000, so that in the exchange made the Bank in effect parted with little or no value for the return to it of the Fleming and Templeton notes and indebtedness. But for reasons already sufficiently indicated, we are of opinion that defendant is not entitled to raise an inquiry into the value of this property, as bearing either upon the question of the Bank's right of action against him or upon the question of damages. If the loan company or the stockholders had good ground for rescinding the 1908 transaction, and this was done pursuant to their resolution, they might waive a return of the precise consideration and accept such equivalent in exchange as to them seemed proper. Because of the identity of the stockholding interest the transaction, even while it stood, was, as we have shown, only a pseudo-satisfaction of the Bank's loss in the Flem-

ing and Templeton loan; and when the real parties affected by this loss undertook on just grounds to set aside the transfer of the notes, and took such proceedings through action of the two corporations as were necessary for that purpose, they had a right to recognize the community of interest in settling the terms upon which this should be done; and defendant has no standing to complain.

If there be a seeming inconsistency in sustaining a rescission of the 1908 transaction avowedly based upon the ground that the loan company had unjustly been subjected to a loss therein, while at the same time we treat as unimportant the question whether upon such rescission full restitution was made to that company, it should be said that we treat it as unimportant only so far as defendant is concerned; and if there be inconsistency it is no more than corrective of the unreality of the 1908 transaction itself. It is defendant who invokes that transaction as an actual realization by the Bank of full value through a sale of the notes that it held as collateral security for its claim against him. If, regarding it as an actual sale, it was voidable because done by agents acting at the same time in a dual capacity or for other reasons, he cannot complain that the parties entitled to avoid it treated it as actual for the purpose of setting it aside, and in the consequent readjustment recognized a substantial identity of interest between seller and purchaser in the rescinded transaction that rendered it hardly an actual sale. For, to the extent that the sale was a sham, there was no realization by the Bank upon the collateral security and hence no satisfaction of the damages claimed against him.

The judgment under review must be reversed, to the end that there may be a new trial in accordance with the views above expressed.

Judgment reversed, and the cause remanded to the District Court for further proceedings in conformity with this opinion.